UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:

GARLOCK SEALING TECHNOLOGIES, LLC, et al,
Debtors.

No. 10-BK-31607

VOLUME XIV-B
AFTERNOON SESSION
THURSDAY, AUGUST 8, 2013

TRANSCRIPT OF ESTIMATION TRIAL
BEFORE THE HONORABLE GEORGE R. HODGES,
UNITED STATES BANKRUPTCY JUDGE

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I N D E X

E X H I B I T S

P R O C E E D I N G S

(On the record at 1:32 p.m.)

MR. INSELBUCH: Your Honor, Elihu Inselbuch for the Committee. The Committee calls Dr. Mark Peterson.

THE COURT: Okay.

(Witness duly sworn at 1:33 p.m.)

DIRECT EXAMINATION

BY MR. INSELBUCH:

Q. Dr. Peterson, would you state your name, please?

A. It's Mark Peterson.

Q. And where do you live?

A. Thousand Oaks, California.

Q. Let's begin. Put up ACC-825, which is -- I take it that's your current resume?

A. Yes.

Q. All right. Could you briefly -- I suggest briefly, because we're going to run out of time here. Go through your education, your academic experience, professional experience, and experience in estimating asbestos liabilities for the Court.

A. I have an undergraduate degree from the University of Minnesota. I then went to law school at Harvard and got my J.D. there. My undergraduate education was in psychology and mathematics. While I was practicing law in Los Angeles, I attended graduate school at UCLA in

social psychology and got my masters and Ph.D from UCLA in that area, experimental social psychology.

After grad -- well, while -- I was practicing law up until the time I graduated from law school. Then I started working at the RAND Corporation, which is a public policy organization that does research in Santa Monica. And I was with them until the early 2000s. All of my work was in empirical research on legal issues: First criminal justice, then civil justice. RAND formed an institute for civil justice in the early '80s, and I was one of the founding researchers in that program and stayed with that until I, first, became a part-time consultant and then, finally, just terminated my relationship with RAND.

Throughout much of that period I was doing consulting work, first, in the area of criminal justice and prisons. And then after the ICJ formed, then a number of litigations of mass torts. Basically, all of them were mass torts. MGM Grand Hotel fire was my first and then Dalkon Shield. Basically, from the mid-1980s on I was doing consulting work in the area of asbestos litigation.

I should state that the major area of my research with the Institute for Civil Justice was really two. One with Professor Priest, who may be testifying in this

case. He and I started a research program on looking at jury verdicts, coding information and quantitatively analyzing information about jury verdicts, first, in Chicago, then in San Francisco, then all of California. And that was expanded later to many more jurisdictions. Professor Priest was at UCLA and then went to Yale. I continued to direct that program and published many studies looking at how juries decide cases.

Then in the area of civil -- the Institute for Civil Justice, I concentrated primarily on mass torts with a substantial emphasis on asbestos litigation. I basically combined my consulting work and my academic work, beginning with a project I did for Judge Tom Lambros in the northern district of Ohio on the asbestos claims in that state, where I interviewed both defense and plaintiffs' lawyers and insurance adjusters about how they value asbestos cases and how they resolve asbestos cases. And from that, I developed a computer system which, actually, Dr. Rabinovitz did prior work on that and continued to do that for a number of years.

I then did consulting work for judges in Texas, in New York. In 19- -- 1990, I was retained by Judge Winestein to help -- he had just stopped payment by the Manville trust because it was insolvent. And I did work for him and for Judge Lifland for five years as a special

advisor to the court providing the technical assistance and, also, it was basically a special master.

After that I continued doing consulting work, mostly for parties in asbestos litigation involving, typically, the estimation of asbestos liabilities. I've worked for claimants' committees like this. I've worked for insurance companies. I've worked for defendants. So I've had a -- basically, if someone is interested in the approach that I do with regard to estimation, I'm perfectly open and interested in talking with them about having -- working for them.

Throughout that period of time, I continued to publish peer reviewed articles at UCLA and at RAND on mass tort litigation and other areas. And I don't know how many, they're listed in here, a whole variety of them, including a research program to try and develop an artificial intelligence computer system that replicates the thinking processes of lawyers in settling asbestos cases. That was an interesting project. It taught me a lot. One of the problems with it is that this one was before PCs and RAND had mainframes. Every time we ran the program, we basically sucked all the power out of the system which I thought was an apt metaphor.

I continued to do that work until the early 2000s at RAND but have continued to do my consulting work.

I've testified in estimation issues, I don't know, probably 25 times or so. I also do consulting work for trusts, doing estimations for them with regard to the liabilities, so they can calculate the past payment percentage so they can afford to pay present claims.

Q. Your Honor, we would offer ACC-825, his resume, for valid purposes.

THE COURT: All right. We will look at that.

MR. INSELBUCH: We would offer him as an expert on asbestos litigation.

MR. CASSADA: Your Honor, we filed a motion already. And subject to your ruling on that motion, we won't argue about his qualifications.

THE COURT: We will admit him as an expert, subject to the objections.

BY MR. INSELBUCH:

Q. Dr. Peterson, can you describe for the Court the framework you begin with, or begin in, when you do an asbestos estimation?

A. Well, of course, I draw on my -- both my research and my prior knowledge as an expert in other cases in doing the work. When I have a new engagement, the first thing -- well, there's two things you do. One is, of course, to acquire the database of asbestos claims so that my colleagues and I at RAND -- at Legal Analysis

Systems, which is our company, can do an emperical analysis; and then to learn as much as I can about the nature of the litigation involving that particular defendant and how it fits into the larger picture of asbestos litigation and the history that this company's experienced. It is important to do the latter, because asbestos litigation is really a system. It's unlike any other kind of litigation, both in its volume --

Q. Now the Court's heard a fair amount of testimony on the history of asbestos litigation. So I would ask you to take him quickly through those aspects of the history that you think are particularly pertinent or were particularly pertinent in doing your estimation.

A. Well, as the Court's aware, there are hundreds of thousands and perhaps by now a million asbestos claims that have been brought all in the U.S. legal system. There's no legal system anywhere that's structured to handle that. The claims are all for a limited number of injuries and limited number of exposures, but they really impact a relatively small number of courts in this country where -- in coastal cities and certain other large areas. There are only a limited number of defendants.

Now there, perhaps, have been thousands of people, companies that are defendants, but most of the litigation

involves perhaps 100 or 200. The same thing as the law firms. There are hundreds of law firms that represent asbestos claimants, but most of the claims are brought by 20 to, maybe, 50 law firms. So these are repeat players and their actions affect each other, and that's an important part of understanding that this is really a dynamic system. What happens in one jurisdiction -- one jury verdict, for example, may reverberate throughout the entire system.

There's also strong relationships across the values of claims, how they're processed, the risks as they rise and fall, the costs. These are all elements that affect each other. Nothing is independent here. And all of that has different influences on particular defendants and plaintiffs' firms. But, again, everything is kind of pushing on everything else. It's a system that's been dynamic because it's changed greatly, as the Court has heard, since in its 40 years when it originated.

One of the important consequences of it, those developments have limited the legal procedures and the strategies that are available for addressing the complexity of resolving these claims. As a result of the length and the nature of the litigation, the lawyers that work in there are specialized. They're very experienced.

We've heard references to the high quality of representation that Garlock had. I agree with that. I've testified about that previously in this case. They're knowledgeable because they've been working at this for a long time, 20, 30 years. They known a lot about garlic -- Garlock. They know a lot about its asbestos issues. They know a lot about the litigation as a whole. And they learn not only from their own experience, but they learn about the experience of others in trials and so forth because they're affected by it.

Mesotheliomas are only a part of the system, but they're probably -- they've become the most significant part. They're relatively small in number, but they're very high values. And they're unique and unusual in other ways. For the defendant, every mesothelioma claim, where there is evidence of exposure to that particular defendant is a significant risk. It's a significant risk to go to trial. That's not true of all asbestos claims.

For the plaintiffs, mesothelioma claims, again because of their high value and the fact that it's a terminal disease, typically a quickly terminal disease, law firms file them right away. If they wait, there's a possibility the plaintiff may die. The plaintiff may die shortly. When that happens, the value of the claim plummets. So every effort is made by the law firm to get

that case on file. And then unlike normal litigation, much of the development of the case occurs after the filing. But you've got to get your place in the queue and then work out the details of it. And that has implications, many of which have been discussed in this hearing.

Finally, I'd just note that Garlock is, of course, a part of this. It's affected by all of the complexities in the relationships, and it affects them in turn.

Q. Has the development of the asbestos litigation over the past 30 years or 40 years been a stable process?

A. No. It's been quite dynamic, and it's changed. Those changes have been significant for understanding the -- how Garlock participates in the litigation. They have a -- they occupy a very risky space in the litigation. They have -- they had well known products that were well identified, well branded. But they were used -- tend to have been used at the sites, industrial sites, where a lot of the other asbestos litigation arises.

And so it was an early defendant, but it was a peripheral defendant. And it's remained that way over the years. And because of the riskiness of its position with its well branded, well known product, it had to keep a low profile in order to keep getting by with paying relatively low compensation in these cases. They coupled

that with a pretty aggressive trial strategy. So that's been its strategy over the years. And then these changes over time have been really important to it because they affect that role and challenge that role.

The Court's heard about Manville's bankruptcy in 1982. That was one of the largest perturbations to the system of asbestos litigation. It followed shortly after the filing of a UNARCO bankruptcy. I've colored those events red because they removed the money from the litigation system. And that's important, as the Court's heard repeatedly. And so those were big disturbances.

Manville -- I've heard in this court that they had 60 percent of the liability. I've had a fair amount of experience with Manville. I've typically never heard numbers that high; more in the range of 20 to 40 percent. But that -- its share, of course, depends upon the facts of a case. To make a blanket rule of that is just kind of -- it's a bit pointless, I feel. I don't have an opinion about what that might be. It was significant, though, and it disturbed the rest of all of the parties to the litigation.

Garlock, in fact, and other defendants, filed motions to try and get that bankruptcy stayed, or to get Manville returned to the trial process, or to extend the whole stay not only to Manville but to all of the

litigation. That was a strong effort that they made. And they used the same arguments in 1982 that they apparently, I heard today, used again in the Federal-Mogul litigation and used again here in this court. That they've lost the defendant that was carrying the biggest load. They paid most of the money and, really, was responsible for the litigation. They took the lead in the litigation. So Garlock was worried, and the other defendants were worried, they were going to now have to shoulder those burdens. So that's not a new issue and it's -- those motions, of course, were denied consistently.

While Manville was in bankruptcy a bunch of defendants formed the Asbestos Claims Facility, as you've heard. That consortium was made up of insurance companies, large defendants, major defendants, people sometimes called "target defendants," and a lot of the peripherals of the type that Garlock has been in. That was an unstable group. Its attempts were to try and change the litigation. Defendants have always been dissatisfied with the nature of the litigation and they try and change how the courts process the claims.

During this period of time courts were frequently creating consolidated mass trials in order to get these cases moving. It's always been the defendant's strategy

to try and delay the resolution of claims, and a large number of claims assists them in doing that. But the courts have had pressures and a desire to try and clear their dockets, and so they used the consolidated trials.

And one of the efforts was -- that's an example of the kind of thing the courts -- that defendants tried to change through the ACF. But the combination of majors and peripheral defendants in one organization was just too volatile. They had different interests. There's always been a big tension between the big players and the small players, each trying to shift the burden on to each other, and that broke apart the ACF. The big guys, the major defendants -- some of them, only a couple, entered CCR. Most of them went out on their own. Most of them went into bankruptcy within several years.

The CCR was formed by peripheral defendants, primarily people that were on the edge that paid less money and they tried to pursue an effort of getting cases cleared quickly without a lot of litigation. That's the peripheral strategy. Whereas, the majors wanted to continue to engage in litigation for their tactical effects. That's kind of how the '80s ended. The other significant event, the Manville trust came out of bankruptcy in 1987 and it started paying claims late in the year 1988. It was then stayed by Judge Weinstein, as

I mentioned, in the summer of 1990.

In the year and a half that they paid claims -- this is probably the biggest event that's happened in asbestos litigation. In that year and a half, two things happened. One is they paid out $700 million of compensation indemnity to claimants. That's a billion and a quarter dollars in today's money. So that was a huge infusion. It's what the defendants wanted. It's what they were counting on and what they expected would reduce their liability. What Manville was paying, it was paying upon average three times as much money to resolve claims as it had in 1982 when it went into bankruptcy.

The other important thing is that Manville was put back into trials. Plaintiffs could name them and get them in a trial. Co-defendants could put them into trials. So they were brought into a great many trials; they were returned to the litigation. They spent $50 million in one year as defense costs of money that was supposed to be compensating victims. So for all those reasons, Judge Weinstein stopped this in 1990.

Q. Moving into the 1990s. Can you briefly describe to the Court the major events that remade the litigation?

A. Well it was an even more volatile period than the 1980s and really began in the late '80s. Six major defendants, and I've colored them red again, went into

bankruptcy within the period 1989 to 1993. And that was a very significant -- and Manville, as I mentioned, was taken out of the litigation in 1990 with a stay. So you've lost seven major players to money that was being provided by them.

Owens Corning continued its aggressive litigation. It became the lead defendant, kind of carrying on the role of the ACF, and it also tried to change the nature of the litigation system. It continued to try and do it through trials. That's something no defendant's ever accomplished, but they often keep trying. They also had an outreach program and, as part of the trials, tried to shift the burden on to peripherals. It was their view they were paying the freight of other companies, so they tried to use this to shift what was being paid.

In addition to losing these seven major defendants, Fibreboard, which was a significant asbestos defendant, was running out of money but had insurance. And so they began paying their claims with notes. They actually struck deals with plaintiffs' lawyers jumped a half or more of the value of claims paid not in cash but in notes. That became lovingly known as "fiber bucks." In addition, both CCR and Fibreboard formed class actions in 1993 to try and, again, control and limit and state criteria that were necessary to compensate claimants and

to slow down what they were going to have to pay in the future. All of those events took money out of the system. It's, in my view, the biggest reduction of the available money, particularly with Manville's lead.

In 1995 Manville came back in as a restructured trust, but now it was only paying $.10 on the dollar as opposed to the hundred cents on the dollar it paid in the late 1980s. There were important lessons that everyone drew from this whole series of events. One is that Manville showed that if a company goes into bankruptcy, it's gone from the litigation. It will always be gone from the litigation. They'll never be brought back into trials again; and their payments are for the most part gone. All that will be returned is some marginal amount of that money that the trusts can't afford to pay not only today but for all future time.

So, essentially, bankruptcy is a way of resolving companies' litigation, but it takes them out of litigation. Second is the Supreme Court rejected both the CCR and Fibreboard class actions, basically killing that as a technique for trying to deal with these claims en masse. Finally, Owens Corning had a terrible experience with aggressive litigation. And that taught everyone that an aggressive litigation policy is unacceptable. It cannot be done with acceptable costs.

And I've seen again and again in the internal documents of asbestos defendants, other asbestos defendants. Their example is we cannot engage in major litigation effort because O.C. told us that's impossible. It's too expensive.

That's really what came out of the period before the most -- the later, more events of the 2000s.

Q. Can you turn to page five? This is a graphic you prepared. Will you describe to the Court what it shows?

A. It really summarizes a series of graphics that I showed to the Court when I testified on matters like this several years ago about the effects of bankruptcies.

MR. CASSADA: Your Honor, I'm going to object to use of this exhibit. It was not in his report. This is the first time we've seen this.

MR. INSELBUCH: This is a graphic description of what he's just testified to.

THE COURT: I'll let him testify. Go ahead.

MR. INSELBUCH: There are going to be a lot of things you haven't seen.

THE WITNESS: There's two important things for me about this. As I stated, there were enormous perturbations in the asbestos litigation. And there were big withdrawals of money, both with Manville's bankruptcy in '82 and then these series of bankruptcies and other

events in the early '90s. There was a big influx of money in 1998 [sic] to 1990 when Manville returned to the bankruptcy, an enormous influx. None of that changed how much people paid. The idea that bankruptcies are -- seriously, in and of themselves, will change the amount of money that people pay has not been empirically demonstrated; certainly, not through the period of 1997.

We've seen -- as we'll get to in 2000s, there were large increases in the amount of money paid by defendants that were contemporaneous with the bankruptcies. And I believe that the bankruptcies, in part, contributed to that, but that was only a part of what were even greater changes.

The second thing is this just illustrates what's the difference between peripheral defendants. Basically, all these people at the bottom are paying relatively small amounts of money and they don't change much over time. And Owens Corning, at the top. Owens Corning, at this point, was the major -- the target defendant. It's the only target defendant for whom I have data, because so many, Keene, Eagle-Picher, Celotex, all those companies that were listed on the products line were major companies. They would have been target defendants, but they got out of the litigation through bankruptcy.

Owens Corning stayed in and they were particularly

running this aggressive litigation campaign. But Pittsburgh Corning -- I can't display their data, it's private, but their payments were not dissimilar to Owens Corning. And so that's an indication that peripherals -- you can identify and define a peripheral defendant by the fact that they're not paying much and target defendants are.

The last thing I note is there's a darker black line, bolder black line, at the very bottom. That's Garlock's. Garlock was not a peripheral defendant; it was among the lowest paying of those defendants. And its values only blipped up at one point slightly -- this is -- by the way, these are the average mesothelioma settlements. That's what I'm displaying here.

Its payments, on average, blipped up in 1993, but that's because they had a series of disastrous trials in New York that were very large verdicts. It's a bifurcated trial and the liability was determined. And before -- excuse me, damages were first determined in large amounts of money. And when that happened they settled those cases with a bunch of other cases. And those were settlements of a series of settlements in success for $25 million per settlement, per group settlement. So that explains that blip. And it also makes some common factor with regard to Garlock's

strategies.

BY MR. INSELBUCH:

Q. Once we pass 1997, describe for the Court the events that then took place that lead us up to the time of this filing.

A. Well, I've returned to -- I have several different demonstratives on this. The first is another timeline for 1998 and beyond. This is after the Supreme Court's actions in the class actions. CCR and Owens Corning, which had abandoned its litigation process, both entered into large inventory settlements. Again, that took money out of the system because they were paying less money under these group deals than they otherwise would have.

W.R. Grace also used inventory settlements and, as part of that, law firms would agree to a moratorium on new claim filings. So they were protecting themselves for a year with regard to no additional claims. That took money out too, but it's colored black because W.R. Grace was not a major defendant yet. It would become and began to become once the bankruptcies occurred in 2000. But if you just judged the role of a defendant by the amount of money they're paying, they weren't paying a lot of money.

It didn't take a lot out.

The CCR ended. It disbanded. It broke apart in

2000. That was one of the reasons we saw four of the eight major asbestos bankruptcies in the period 2000 and 2001 were CCR members. They left the -- they couldn't stand to be in litigation. Turner and Newall is an example -- Federal-Mogul is an example of that. Of the eight bankruptcies in the early 2000s, two of them involved defendants that were paying lots of money prior to that. That's Owens Corning and Pittsburgh Corning.

The others that are in black on the next two lines went into bankruptcy, but they weren't major payers. In the past I've called all of them "major defendants," "target defendants;" some of them had the potential and would have become so if they remained in the litigation. Federal-Mogul, certainly; W.R. Grace, certainly; perhaps G-1. But their bankruptcies didn't remove a lot of money. And that really is the issue that's been raised in this case, how much money is no longer available for indemnity so that now Garlock or others say they have to make it up. That's why I distinguish those cases.

Having lost almost every other strategy, the defendants turned to attempts at legislation. They had made a run at that in the early 1980s, unsuccessfully, trying to get congress to pass legislation that would limit asbestos litigation. They tried the federal FAIR Act unsuccessfully. Garlock has stated it was a major

supporter of that. Interestingly, Dr. Bates and I both testified for the Senate committee against the FAIR Act as being unworkable. It did not pass. But the defendants have been more successful in several states, Ohio, Texas, and so on, passing legislation that really makes it more difficult for asbestos plaintiffs to bring; and that has been an effort in recent years.

Finally, by the latter part of the 2000s the new trusts returned, some of them returned. And in the three year period, 2006 to eight, I believe that's three years I calculated, the amount of payments that were made by asbestos trusts in those three years were greater than all the money paid in the prior 19 years by asbestos trusts.

So, again, there was a significant infusion of cash but in a very -- not nearly what those companies would have been paid if they were in litigation. But whatever they were going to be paid began to come back in. But these are only a part of the changes in that period of time. That heading of the slide says "additional bankruptcies are only part of the dozens of accelerating changes." This is not all that happened. This was the most turbulent and important change. I have to add personally that it's this changing nature in asbestos litigation that makes it such an intriguing area

to research. It's just fascinating to see how this changes and how it affects everybody.

Q. I think on page seven we have listed the defendants' approaches changing. I think you've described these changes to the Court already, Dr. Peterson, so I think we can turn to page eight.

Now, how did the values change as a result of these affects in the tort system?

A. Well, trial verdicts went up. They've gone up consistently and greatly, as long as I've been aware of it we've been looking at data on it. They reached some - for periods of the middle 2000s, some stabilized. But for this whole period of time through the early '80s, there was a significant continuing growth in asbestos verdict amounts, particularly for meso.

Settlements, also, for particular defendants went up greatly in this period of time and that was in part because of the changes in the court system and the practices. There were fewer and fewer mesothelioma claims filed in the -- after 2002. They peaked in 2001 and two. And when those cases were no longer filed, it relieved court congestion. And the key for a mesothelioma claim's value is to be able to get a court date.

So when you've relieved the congestion by

lessening the number of nonmalignant claims, you've increased the value of mesothelioma claims. And those led to the fact that in the 2000s, mesothelioma came to dominate the total amount of money that every asbestos defendant pays. It's well over half for every defendant. Whereas, in the 2000s -- in the 1990s, when there was so much nonmalignant money out there -- so many nonmalignant claims, even though they were paid less, a great deal of the money went to those. That's no longer happening. And all of that had significance for Garlock.

Q. Turning to the behavior of the law firms as the process developed. Would you describe that to the Court?

A. Yes. I've put this on two slides because, first of all, we know that there has been increased advertising of asbestos -- availability of getting compensation for asbestos injuries. But that's a really important event because it has changed the litigation broadly. It's expanded the claimant pool. It's brought in more claims. It's brought in more mesothelioma claims. It's broadened the knowledge about asbestos injuries and the relationship between cancers and asbestos.

The word "mesothelioma," no one used to know what it was when I was talking about what I did ten years ago. Everybody knows what mesothelioma is now because of the advertising. And if someone gets the mesothelioma,

there's broad knowledge that there's available compensation through litigation. And that's really impacted the scope -- and that's one of the reasons why the number of mesothelioma claims continue to go up. It also affects the opinions of jurors who now have come into these courts not completely naive to this issue and probably has contributed to the increasing values of jury verdicts. Finally, it affected the plaintiffs' bar by itself because it promoted specialization. The fact -- that has to do with how claimants were recruited.

In the past, if you got mesothelioma you would have known about filing suit, basically, from social networks. Not computer social networks, personal -- your colleagues at work, your friends, your family. Anyone that had that experience could inform you about your opportunities and, perhaps, direct you to a lawyer. Now, with advertising, a lot of these go to the advertising law firms. And those firms, in turn, make some decisions about which will be the ultimate trial law firm that handles that case.

The significance of that is those referring law firms, it's in their interest to send these cases, the strongest cases, to the most qualified, in their opinion, plaintiffs' law firms in order to get top bucks for them. And so the best claims are now more likely to be

represented by the best law firms than they were in the past. Again, that's a threatening event for asbestos defendants.

Q. How, if at all, did the plaintiffs' firms practices change as a result of these developments in the litigation?

A. Well, in general, it really emphasized the desirability of settling these claims and settling them quickly. There's always been an advantage of settling asbestos -- for a defendant in settling a claim quickly because you can get lower value that way. As the plaintiff's lawyer has to develop the case, they invest money in it and they'll demand more.

Also, as you -- if you don't settle early, you may be one of the unlucky defendants that's around as that case is getting close to trial. And your trial risk goes up, and also the plaintiff's lawyers are looking to you to pay a bigger share than they necessarily would have demanded and obtained early on.

And finally, these -- their values are lower because the money paid by early settling defendants helped capitalize and fund the litigation against subsequent defendants. So there are advantages to plaintiffs in getting early settlements. Plus, you've got a dying victim here. So the earlier you get them the

money, the happier those victims are.

The prompt payment is really almost more important than the amount of money you get. If you're 73 years old and you're dying and you're only going to live six months, you're worried about how your spouse is going to be cared for. The immediacy of payment is one of the most strong -- I've talked with lots of asbestos victims; it is a strong motive in these settlements. And so one of the things the defendants learned is that they want to settle these claims quickly.

They also learned throughout all of this that they want to maintain a peripheral status. They don't want -- particularly, a defendant like Garlock doesn't want a high visibility. Because if they do, if they go to trial, there's a number of implications. One is they can get hit with big, risky awards. Second is the more trials you take and the more you become visible to plaintiffs' lawyers, the more likely they are to invest in developing the case against you.

If you're a secondary defendant in some trials, the plaintiffs' lawyer's bar has not had big incentives for developing facts and strengths of their cases. But if you are now more visible and you're going to trial more often, the plaintiffs' lawyers are more likely to invest money in your case, develop expert witnesses for

the case, improve the quality of their case, and get more money and increase your risk.

Q. Can I turn your attention now to what you observed Garlock's behavior had been in the litigation and how it's changed over the years?

A. It's precisely what I just described. They were -- the first couple of points here just says, as I've been indicating, it's important to understand how Garlock fits into the whole picture and how it's fit into the changes over time.

The third is interesting that Garlock, despite the kind of dangerous space that it holds in the litigation, has been able to maintain a low visibility throughout, basically, until it got -- came into bankruptcy. It had a higher visibility after the bankruptcies and the other events of the 2000s. But still, it continued to pay very little values. And it did this in part by this settlement process of settling claims in large numbers; settling them relatively quickly.

Of all the claims that Garlock settles, more than half are settled within about 18 months, give or take a month. So they have been able to get rid of most of their claims through group settlements and to do it relatively quickly and to pay low indemnity rods. They've combined this with what I call a passive

aggressive trial strategy. It's aggressive because they're like Israel or North Korea, countries that are small but have extremely effective defense capabilities, and so does this company. And so they wave that around to discourage being taken to trial by plaintiffs' lawyers. But they'll take a case to trial if necessary, and they've done that with a fair amount of claims. And they've ended up paying about two verdicts a year for the last 20 years.

Q. So Garlock, I take it, was able to maintain its strategies in the face of these general changes and changes specific to them?

A. It did. It retained its position, but its position deteriorated after 2000 because, first of all, the plaintiffs' lawyers began to develop their claims, the causation and exposure issues. They were -- they've been hit by Garlock's excellence in that area for at least a decade before, and they finally came to respond to it and invest the money necessary to deal with it.

Dr. Longo was a perfectly good example of how they invested or helped or developed the kind of tactics that they needed to prevail against Garlock, and they did that. As a result of those changes in the 2000s, Garlock lost many more cases, a larger percentage of cases. They lost only one in 12, eight percent in the -- in the

1990s. They lost 36 percent in the 2000s, and they suffered higher verdicts. So their trial positions deteriorated.

In 2000-2001, they went on a little experiment. That's at the time when all these defendants were using inventory settlements. And Garlock tried that out and it wanted to clear its backlog, and it did so. But one of the consequences of any inventory settlement is that that can bring in more cases. If you're paying out a lot of money to the lawyers, again, you're drawing attention to the plaintiff's bar. So they will tend to file claims against you. And Garlock ended -- that was their perception, their self-described perception, and so they stopped doing that.

Q. Did you prepare a graphic to show what Garlock's place was to show what it was paying compared to other defendants in the tort system?

A. Yeah. I prepared this graphic, both for that purpose and also to show what happened with regard as many people as I have public data for after that vertical bar, which is 1997. That's when all these changes that I just described really began to take off and just broadened the breadth of things happening here.

And as you'll see, Owens Corning went into bankruptcy. So, they ended -- virtually, every one of

these other companies went into bankruptcy and that's why their lines end when they do. But the values of claims paid by defendants, except for Owens Corning whose values were driven greatly by its trial success at a particular point in time, they went -- Owens Corning's went down in 1998, the bar's of 1997, because they entered into their inventory settlement which reduced what they were paying. Everyone else's went up.

And these changes began, that I've been describing, happened in 1998, two to three years before these bankruptcies that Garlock is emphasizing happened. Now it preceded the bankruptcies, which is another reason to conclude that the bankruptcies in and of themselves weren't driving them. But everyone's values -- values against everybody went up in the 2000s, even though they had been pretty stable and unresponsive previously. The company whose average values went up the least was Garlock.

Q. Now, throughout this changing litigation, did Garlock follow a classical peripheral defendant's strategy?

A. Yes.

Q. What did that involve?

A. Pardon me?

Q. What did that involve?

A. Well the basic thing is you want to keep a low profile. You just -- you don't want to be seen as a source of payments. You want to be seen as a secondary source. And that was carried out most effectively. It's carried out by Garlock; it was carried out by CCR and other peripheral defendants. You want to settle quickly. You want to settle en masse. You want group settlements. And that's what garlic -- Garlock began to turn to in the -- and they sought out deals.

In particular, when a law firm demonstrated success -- I mentioned previously Garlock's unfortunate experience in 1993 in New York. Their response to that was to negotiate -- offer and negotiate group settlements with a law firm that represented those claims. And ever since that period of time -- this is a major law firm in Manhattan, probably the most dangerous jurisdiction in the country for mesothelioma claims for defendants. They worked a deal with the major firms and ever since then they've had a deal covering those cases to keep them from taking them to trial. That's a very effective strategy. Rather than -- once you've been burned, learn, settle, don't get there again. Garlock does that. Garlock's been -- they're almost a Harvard law school case study of how to handle these cases.

In negotiations, they also asserted that they only

had a limited amount of money that they could and would pay each year. And they used that effectively in these group settlements, because they would say to a law firm, listen, I've only got X amount of millions of dollars left to pay out on settlements this year. The year is running out. You can make this deal now. But if you want to hold off and try to renegotiate it next year, the money will be available. But if you want to get it now, this is a deal. That's the kind of tactic they could and did use.

They also, when they began to approach the insolvency of the early -- the exhaustion of their insurance in the mid-2000s, they used that to effect with some plaintiffs lawyers saying you've got to cut me a break here because I don't have much money yet. Plaintiffs' lawyers are receptive to that. They want to get that money; they want to keep the insurance coming and get what they can out of it. And the last thing that plaintiffs' lawyers wanted Garlock to do was file bankruptcy. It is a process that is despised and that -- by plaintiffs' bars. They've never really gotten good things from bankruptcies, so they want to avoid it. All those tactics they were using to minimize their payments. The group settlements also facilitated their

yearly targets because they could do plannings: We're only going to pay so much money. So it had that benefit too. They continue to avoid trials.

Q. Was their strategy, as you described it, discussed in any public filings?

A. Their financial statements from as far back as I've been able to review, which is Goodyear's in 2001. Goodyear then owned Garlock. And they described that Garlock settles and disposes of actions on a regular bases. In addition, some matters are disposed of by trials. But they emphasize settlement. That language, I believe, has been in every financial statement of EnPro's since then. They also note that when they can't get a reasonable settlement they will try a case, and they do.

And the last quote here is that when the risk of verdict is great, as I've described, they will from time to time enter into settlements that involve large numbers of cases, including early stage cases. They state their policy is not to settle early but, in fact, in reality they settle many claims quite early when it believes the risks outweigh the benefits of the strategy. They're very practical of guarding their policies and their policy is primarily a group settlement process. It's not trials. It's not individual trials. It's group settlements.

Q. What have you displayed on page 16?
A. Again, this is just more from the financial statements. This is the Goodyear statement, but this language also continues in subsequent financial statements. Their strategy is to focus on trial cases, other cases in advanced stages of processing. They say that, but in fact -- some cases get trial listed early if it's a living meso, but for the most part their mesothelioma claims are settled quite quickly. As they note in the second quote, it is likely Garlock will continue to enter into settlements that involve large numbers of claims. That describes their tactic. They will do that group process.
Q. Did you do a statistical analysis to see whether the data supports your understanding of what Garlock's strategies were?
A. That's how I came to understand it, really, is -- well, first of all, everybody does group settlements. I mean it's ubiquitous. It's the method for defendants in dealing with cases. This just demonstrates that and how they've turned more and more to group settlements. Until the period 1996 to 2000, 19 percent of Garlock's settlements were individual claims.
By the last five years before they went into bankruptcy, only nine percent of them were individual

claims; all the rest were group settlements. In the 2000s, they went to larger group settlements, particularly the period 2000 to 2005. They -- almost half of their cases were in group settlements above 20, and 13 percent of them were in group settlements involving a hundred cases at a time. In the five years just before bankruptcy, they continued to rely heavily on group settlements, though they were somewhat smaller sized groups.

Q. Having described to the Court your basic understanding of what was going in the tort system, I would now like to turn to your actual estimate that you've presented to this court of what Garlock's asbestos liabilities would be for the period beginning on the date of their filing. First, tell the Court in broad language what you do when you do an estimation.

A. Well, as I stated before, and just summarizing this headline, the first thing you do is you understand and apply the history here of Garlock's asbestos litigation. I have described that. That informs the kinds of judgments I have to make in estimating the liability. It makes it a richer estimate, a more well-grounded estimate.

Having gone over that, now the calculations are simple. I mean Dr. Bates described it as simple. It's

just arithmetic. The data are -- Garlock has very good data about its asbestos claims. So you have readily available data. And the calculations that I do are basically the same thing that Dr. Rabinovitz does. There are differences in judgments throughout, but the basic calculations are the same. They're the same thing that Dr. Bates uses when he uses what's called the Nicholson Method. Everyone does. Dr. Nicholson has made forecasts using this method -- had. He's, unfortunately, deceased.

And simply, you count the number of claims and you determine what fraction of them have been paid historically. And you look at that and then make an assumption about what fraction of the mesothelioma claims here will be -- you think will be paid in the future and what is the average settlement that Garlock has paid. As you look at the mark-up -- as I described, these are large numbers of claims that are settled. And it is a bargaining process in group settlements that set the value of claims.

There's enormous history here. Asbestos litigation has more information for estimation than any other kind of litigation. You just multiply those three things together and you get the value here of pending claims, and I've shown those calculations on this.

Q. Turning to the pending claims liability. Where

did you get the information to fill in the three boxes?

A. Well it all comes from the database. Just simple calculations and analysis of the database. There are -- there were 4,754 claims in the Garrison database from May 2011 of asbestos -- of mesothelioma claims. Dr. Bates has subtracted about eight or 900 of those. So he has 3,900. But that is the number of identified claims, and I'll address his subtraction of those. But we're considering every mesothelioma claim that are in the database.

We take the source of our data as being -- the forecast is based upon the pre-bankruptcy experience of Garlock in the tort litigation system. We take the data to reflect what's the status and the history of that litigation up through the time of the bankruptcy. You do not look at events that happened in the bankruptcy because those aren't in the tort litigation and my experience of 20-some years of doing this. So what happens in the bankruptcy is very different from what happened in tort litigation.

Since we're estimating what would be the liability of the tort system, you can't look to resolutions or things that happened in different processes in order to understand what happened in tort litigation. So, that's our number -- we looked at, historically, what Garlock

has made paid to resolve its past asbestos claims. It's been 58 percent of mesos get paid. Of those that get resolved, among the rest of the resolutions, those are closed without payment of 42 percent.

Q. These are the numbers you ultimately concluded were the actual figures for the pending claims liability?

A. Yes. And the average -- the $76,654 is the average paid by Garlock in the last five years preceding bankruptcy.

Q. Let's unpeel that a bit. How did you go about determining what the percent paid that you put in that box should be?

A. Well we looked at the experience of Garlock over the period of 2006 to 2010. Basically, the assumption is that the future values and experience with claims will be most life contemporaneous in recent past. Again, Dr. Bates acknowledged that this is -- kind of the standard way of doing this in his deposition is to look at the most recent experience, and that's what we do.

It may be, as I did in Garlock -- I mean, in Bondex I had to use a longer period of time than I would have liked. Because Bondex's methods for resolving claims changed so frequently, I needed to look across a broader period of time. But here, Garlock's resolutions of claims, its strategies and the methods resolving, is

very stable. And interestingly, since the mid-'50s, asbestos litigation has stabilized. It's been less of these perturbations in the last five years of Garlock's position in asbestos litigation than I have ever seen. And Garlock also is very stable.

So the recent past is the best basis for forecasting the future, and it also has the advantage that that's the standard way that estimations are done for virtually everything. If you're trying to determine the value of a house, you look at comparables sales that have occurred in the recent past. You don't look at what was the value of this house or neighboring houses ten years ago. That's not informative.

Here, to understand what is the value of an asbestos claim in 2010, you look at what's happened in the prior several years. You don't go back to the 1990s when, as I've shown, the asbestos litigation was so different. It was a different type of litigation then. The determinates were very different in the 1990s than they are now and than they will be in the future. The future will be more likely to be what it was at the time Garlock went into bankruptcy than it was in 1990.

Q. When you look at the percent paid of cases that Garlock had experienced over the decade, what did you find?

A. They went down. It went down drastically. In the early part of the 2000s Garlock was paying most mesothelioma claims. It resolved relatively few without payment.

Q. Did you show this on this page 22?

A. That's what this slide. Page 22 shows that, and it shows -- this is -- again, this -- you take all the cases that were resolved in each year and you look at what percent of them were closed with payment. And now in the last half, the last five years, those have stabilized. And so they go up and down some, but they're relatively flat. 2010 was lower, but 2010 was the -- was five months preceding its bankruptcy. That's typically, usually, an atypical high pattern.

Here -- I mean, here Garlock knew it was going to be going into bankruptcy in 2009 and '10. So you're beginning to get a period of time about their decisions to resolve claims. They're tactically looking at what impact that might have on the bankruptcy process or how the bankruptcy would affect it; or what they want to accomplish before they go into bankruptcy.

Nevertheless, we averaged this -- this is the percent payment across the whole five years, 2006 to '10, and it was 58 percent. We had an alternative estimate using the longer period of 2003 to '10, and that was a

higher percentage of claimants paid. That would be a higher liability estimate using that.

Q. Did you do the same analysis for average settlement values?

A. Yes, we did.

Q. What did you find?

A. Well, here the average values were going up over time. The percent paid went down and the average values were going up. Again we used the same period, the last five years from 2006 to 2010. They were pretty stable in the period 2006 to '09 so -- and that group was different from the prior three years. So that suggests that's the appropriate period of time that stability and that discontinuity between 2005 and 2006 suggested one use a later period.

Let me just comment that 2010 -- again, it's a limited period, it's five months. There was a much higher settlement average in 2010 but I don't regard that as being typical of the whole five year period. It isn't. And maybe it isn't typical of what would happen in the future. However, when you -- so when you average these five years together, the 2010 experience is much less significant because there are fewer claims in them. It doesn't affect the overall average very much. The overall average really just lies in the middle of what

would happen between 2006 and ten.
Q. And in the estimation you're going to multiply the percent paid by the settlement value?
A. Yes. That's effectively what you do. You multiply the one times the other, and that's a variable too. We call that --
Q. What did you find?
A. Yeah. That's -- we call that the resolution average. It's just -- it's multiplying the average settlement by the percent paid. That's, interestingly, even though there's an upward trend in settlement values. Not surprisingly, the upward trend in settlement values and a downward trend in the fraction of claims paid, they, cancel each other out. And so that shows that across this whole period of 2003 to 2010 the overall average across claims that are paid in and those not paid is very stable. It's at around the low to mid-$4,000. So it doesn't make much difference which of those two periods you use. Again, we believe that the 2006 to ten is the better period.
And if you go further back than 2003, you're now getting into the inventory settlement period that Garlock had and you're getting into the 1990s, and that was a different world than they were operating before they went into bankruptcy.

Q. So this is how you got the percent paid and the average settlement value, counted the claims in the database, and that's the result?
A. Yes. The simple arithmetic of it.
Q. How large was the database that you had to work with to get these values?
A. Oh. Across all diseases there are, I think, 700,000 claims. For mesothelioma, there was certainly less than a hundred thousand offhand, you know, tens of thousands of claims, but I don't know the precise number.
Q. So the percent paid and the average settlement value was developed out of a database with tens of thousands of cases resolving?
A. Yes. I think the resolved claim was 17 or 19,000 offhand. I believe that's the range. Actually, well we used the last five years so it isn't quite that many.
Q. Turning to the future forecast. How is that done and how does the processing of future forecast differ from processing the pending forecast?
A. Well, it's identical for the most part. There are two changes. One is that we don't know the number of claims. We have to forecast that. So that's a -- that's one difference. The other is that these claims are going to be paid out over a long period of time. We assume that the pending claims would all be resolved within

three years. So we don't need to really address very -- the issues of inflation and present valuation aren't really significant.

On future claims, it is. A claim paid 15 years in the future will have a bigger nominal value simply because you have 15 years of inflation, and you have to consider that. On the other hand, Garlock -- if we're going to reserve money -- if it were able to reserve money sufficient to pay all of its liabilities, it would have to put away less money to pay a claim 15 years from now than it would today because it can hold that money and earn income on it for 15 years. And that's what the present valuation is of course. So you need to do that.

Our future forecast is done on a year by year basis, taking into account inflation and present valuation. So that timing issue and the need to forecast the number of claims on a yearly basis is the one -- is the difference between these two forecasts.

Q. Let's first focus on how you calculated the number of claims for the futures. Describe to the Court how you did that.

A. We relied upon the most -- an epidemiological research. Epidemiologists -- this has been an area of substantial study by epidemiologists. The best work with regard to forecasting was done at Mt. Sinai Hospital in

New York, oddly, in 1982. A long time ago. I mentioned Nicholson, that's William Nicholson. He was an epidemiologist there working with Dr. Irving Selikoff. Dr. Selikoff was the dean of research in asbestos-related injuries. Together they worked on the seminal study of insulators, about 17,000 insulators. They took the available information at that point in time and forecast the number of future claims.

So we basically -- but historically, we know at least for most years now how many mesotheliomas actually occurred in the country. And we know that quite precisely for the last ten years because the federal government has a series of programs for collecting information about cancer deaths, and they do it by cancer. One of those cancers is mesothelioma. So we calculate what's called the propensity to sue. It's just the probability -- the rate of claim filings. And you look at all of the mesotheliomas in a year of the incidence and you divide that into the number of mesotheliomas filed to calculate the propensity to sue, and we use that for our forecast.

This is actually the counts that I mentioned, these government studies. The two major groups of them, one is called SEER, that's a surveillance of epidemiology and results. It's run by one of the health programs in

the federal government. And for the last -- since 1975, they've gone to hospitals, hospices, other places where there are records of people's deaths and count how many people died of mesothelioma, as well as other diseases. And they started with nine sites. A site was the state of Iowa, one site. Another site was in Los Angeles/Long Beach. These were not randomly selected; you can't randomly select these. But it was the weight of those results, of those nine sites, to estimate what was the national average.

That's why that line is so bumpy, because it's done on a relatively small survey. They later went to 18 sites, the SEER 18, and they went to 15 in between. But I'm just showing the SEER 9s or 18. That's the purple line. And both of those are the estimates of the national mesothelioma deaths based on data from either nine sites or 18 sites.

The USCS, the green line, is a more recent study where every state in the union is surveyed. They now do this in every state of the union except Maryland. You'd think where Johns Hopkins is they could get their data together, but they can't. So for 49 of the 50 states they go to all the hospitals and hospices and count now every mesothelioma. It's what we would call a census. It covers everything. With the exception of Maryland,

you can estimate that. That's the green line. And it is much more stable because it has a much larger almost -- it collects almost all the data. This tells us year by year how many people died of mesothelioma. So we know that is a fact.

Q. How do you use this to predict the future?

A. Well if you go back a slide. That provides the incidence number for past claims. We, actually, use an epidemiological forecast of it, as I'll describe in a minute. But that's dividing the number of claims by the incidence, and that gives you what's called this claim rate. You then look at the future. You have to have an estimate of how many mesothelioma -- what the mesothelioma incidence is going to be in the future, how many people are going to die each year from mesothelioma, whether or not it was caused by Garlock. This is all deaths in the country. Of those people, what fraction of them are going to file -- have historically and are likely in the future to file a lawsuit against Garlock.

The actual data is only available up until a couple of years ago. Obviously, we don't know actual data for the future. However, Nicholson's study in 1982 forecast both the past and the future -- past sitting here today of mesothelioma deaths, and so that gives us an estimate to use in the future for -- to calculate the

future number of mesotheliomas that will get filed.

Q. Did you compare Dr. Nicholson's forecasts against what the actual results were?

A. Yes.

Q. And what did that show?

A. Well that's shown on this slide. The red line is Dr. Nicholson's forecasts. The blue line is the longest piece of data we have about mesothelioma deaths actually occurring. As I say, it jumps around a lot. But Nicholson's forecast is an incredible forecast. It really -- it is -- basically, it is a good average of what happened across all those years. It is the most impressive forecast I've ever seen of social data, and so we have confidence that up until now this is a -- Nicholson is an extraordinarily well confirmed piece of science. And that gives us confidence that it is likely to be a -- continue to be a good piece of science in the future for estimating the future.

But I have to note one thing. If you look at -- the actual counts differ from Nicholson's forecast year to year. But if you look over the last ten years or so, most of the actual counts lie above Nicholson's. There have been more mesothelioma deaths than Dr. Nicholson had forecast for the last ten years. And it isn't clear -- Nicholson is now going down, but those -- the actual data

may not be going down, or it may not be going down as quickly. So it's possible in the future that Nicholson will be underestimating the actual incidence. There are reasons to think that that might be true. One is that Nicholson's forecast for future deaths is only on the basis of people having been exposed through the 1980s. We know that people continued to be exposed to asbestos after 1980.

Secondly, he only -- he does all of the major asbestos industries as the source of his forecast, and people working in those industries. By the way, he only forecasts occupationally-related deaths, but there are some people who worked in different industries that he didn't forecast. Asbestos removal, for example, is a kind of industry that that happened. Those constitute a smaller fraction of the exposures than what he includes, but that could be another source of additional claims.

He's undercounting somewhat, because there's been a rise of the kinds of things that are going on. Household exposures. We see, particularly in the litigation today, there are a large number of claims filed by spouses and children of people who worked with asbestos. Their exposures occurred because the father/husband, brought home asbestos on his clothes and exposed the family. Kids would run up and hug their

daddy when he comes home from work. But if he's covered with asbestos the child is getting an exposure. That's significant for mesothelioma because it's a low-dose disease. That means you don't need a lot of exposure of asbestos to get mesothelioma, and that means that these -- that a lot of people --

MR. CASSADA: Your Honor, I'm going to object to his expressing medical opinions, since that's entirely outside of his area of expertise.

THE COURT: All right. Go ahead.

THE WITNESS: That is a consensus of knowledge that everyone in asbestos litigation knows.

MR. CASSADA: Same objection.

THE WITNESS: So you're getting that as another source, and people are living so much longer. All those reasons Nicholson may be undercounting. But we still use Nicholson. We use him because it's available; because it is a scientifically confirmed basis for forecasting. No one else has it. If you don't use Nicholson, you do not have a scientifically confirmed forecast.

This just shows it. But we also would -- I would caution the Court that the number of future mesotheliomas is -- there's a good chance it may be more than we're forecasting, which means that there may be more claims in the future than we've forecast. So we regard that as a

conservative estimate. Again, since I've been retained by the Asbestos Claimants Committee, that's a conservative forecast rather than trying to maximize and run up my forecast that this is an assumption that probably minimizes my forecast.

BY MR. INSELBUCH:

Q. So what you show on page 31 is that you're going to use the Nicholson curve to forecast future mesothelioma incidence. How did you go about doing that? Show us how that appears on page 32.

A. This is the calculation that I mentioned. You compare -- the blue line is Nicholson; the red line is the actual mesothelioma claims filed against Garlock. And so you can see that the propensity to sue is going up because the number of actual claims filed with Garlock is going up relative to Nicholson. But in each year you just divide the red line by the blue line. And we sum that up again over the last five years, the same period we use for determining all of our other parameters here.

Q. And did you show that calculation on page 33?

A. That's shown on page 33. These are the actual calculations. So it says across the period of time from 2006 to 2010, roughly 58 percent, 57.6 percent of the number of people who got mesotheliomas in a year filed a claim against Garlock. Obviously, not all of them are

going to get paid. In fact, less than 60 percent of them will get paid. So that suggests that the -- among all the people who -- with mesothelioma in the country, about a third of them would file a claim that would become compensated by Garlock. And that -- again, that propensity to sue isn't much different if we use the 2003 to '10 period or the 2006 to '10.

Q. Would you say that that propensity to sue is stable, rising or falling?

A. Well it has certainly risen, as that prior slide showed. It's risen over the 2000s, and it's risen over the last five years. This shows it from 2003 to '10. The black line is the actual propensity to sue. The red line is our calculated propensity to sue for 2006 to '10. It shows that early in that period the propensity to sue was lower than our average; at the end it was higher than our average. So it has gone up. It's gone up over that five-year period.

Q. Now, because of the difference between the annual propensity to sue and the average propensity to sue, did you prepare two forecasts?

A. Leave this up for a second. You can see it at 2010. The red lines -- what we would be using if we forecast future claims based upon this average. It's lower than what they their experience was in the last

three years before they went into bankruptcy. So we would be forecasting that their future claims are lower than they actually have been over the last three years. So for that reason, we -- and there's two things going on at the time they went into bankruptcy. One is the absolute level of their propensity to sue, and that was the line that I showed, the flat line, previously, and where the point of the red bar stops. But, also, they're going up. So there's both an absolute level and there's a trend.

We replicated that trend. We essentially said okay, we're going to start out at a point lower than they actually finished up. We're going to start at the average of five years. But we're going to assume that just like it went up over the last five years, it's going to go up at the same average rate it went up over the last five years. That's the blue line. So we've just basically replicated our forecast. The first five years just looks the same as it did over the last five years.

And so that's the forecast. That's what we call our preferred forecast. That's the primary forecast. The propensity to sue will start the remainder of 2010 and 2011 and at a rate lower than it was in the three years prior to going into bankruptcy. It will slowly rise to a point that's slightly higher than it was in

2010, and it will remain at that rate forever after that.

Future trends beyond that we're just assuming. We don't have enough knowledge to forecast beyond that period of time. The alternative forecast is the green line, which just uses 2006 to '10 without, well, incorporating the trend. I regard that as inappropriate because we're ignoring an important parameter, an important effect. That is the propensity to sue were going up in that period of time. But we can conduct, and I will show you the results of using both those lines.

Q. How does these two forecasts compare with what have been Garlock's recent pre-petition experience?

A. Well, again, this is, in fact, our forecasted number of claim filings now. Heretofore, we've been talking about the propensity to sue, the claim rate, Dr. Nicholson's forecast for the future is going down, perhaps too sharply, but it's going down. So that's what we're using. We forecast the number of mesothelioma claims after a couple year rise will go down.

It will continue to go down until 2050, when there will be hardly any. Either of these two forecasts, our primary or secondary, says that the number of claims immediately after bankruptcy and forever after are going to be well below the number of mesothelioma claims that were filed against Garlock through most of the two

thousands. And again, than -- with regard, that is conservative because we think it may be conservative because of counting.

Q. Have you prepared a graphic that compares the compensable claims with the actual claims that you expect to be filed, both for the past period and the future?

A. Yes. Yes.

Q. Is this that chart?

A. It is. It's important to recognize that a very substantial number of the claims filed against Garlock haven't been paid and won't be paid in the future. Its liability really arose in the past in that kind of yellowish color to the left. The red color in the future that represents their liability. The rest of it are claims which will be filed but they're not going to be paid. And so that -- that is the actual trends. And again, the level of the number of claims is basically a continuation of what it was in the past but going down.

Q. Okay. Coming back to the forecast. Can you tell us the basic parameters, then, that were involved in the future forecast?

A. The basic parameters are, first of all, the propensities to sue. We made two alternative assumptions. The primary is 2006 to 2010 with using the average and trend both. Our secondary is using the

longer period of 2003 to '10 without an increase. We forecast beginning at the date of the bankruptcy in June 2010 through the year 2049. We claimed the claims by the late 2040s are not very high because of present valuation.

We calculate the average payment based on the period 2006 to '10 for our primary forecast; 2003 to '10 for our secondary forecast. The payment rates? The same period of time for our primary and secondary. I should note that those two together really doesn't make much difference which period of time you use, because of the stability of the payments overall. We use a two and a half inflation rate which comes from government estimates and is widely used. We use a discount rate of 3.251 percent, which is a risk-free rate of return provided by the Committee's financial consultant.

Q. When you did this calculation for the future claims, what did you come up with?

A. We have -- we estimate that there will be 25,813 mesothelioma claims filed after the bankruptcy date against Garlock. Again, 58 percent of them will be paid. On average, the real value of the average is 76.654. That's the amount that would be paid each year. It will be paid in a real value, which means it will increase at two and a half percent a year. And that generates a

nominal value. We just multiply all that together. Actually, we don't take into account the inflation here of a billion-148 (a billion one forty-eight).

Q. And then did you do a calculation that would reduce the future forecast to present value?

A. Yes. Yes. That's what I've described earlier, the assumptions we have. The third line -- the first three rows describe the forecast for pending claims; the middle three are forecast for futures. The bottom includes them all.

For future forecasts, the NPV line is the last row in that block. We used the two and a half percent inflation rate, and I bring it back to present valuations. Rather than a billion-148, it's a billion-155 for our primary model; $880 million for our secondary model. When you add that to the estimated values for pending claims you get, as our primary estimate, the total liability for Garlock present value for mesothelioma claims. But pending and future is $1,265,000,000. Our secondary estimate, which I would urge -- say it is a reasonable estimate. But I will tell the Court that the primary is, I think, a much better estimate. The secondary estimate is that the liability is a billion 77 million dollars.

Q. Your Honor, unless the Court has questions about

the forecast we'll move on to another topic.

THE COURT: All right.

BY MR. INSELBUCH:

Q. In addition to doing your forecast, Dr. Peterson, did the Committee engage you to review Dr. Bates' estimate and provide your opinions about that?

A. Yes, they did, and I provided those opinions first in my rebuttal report that I prepared in this case.

Q. Now, to start with, when you read Dr. Bates' report, were you able to tell how he calculated his estimate?

A. We could -- no, we could not -- the report did not disclose how he calculated his estimate. The report did not even tell us what his estimate was. Rather than reporting his actual estimate for pending claims or future claims, it said it was less than $25 million for pending and whatever the number he reported for futures. It did not report the actual estimates, nor how he got to those estimates. It was both -- that report was, like, 130 pages, and it discussed all kinds of ways he could calculate it and statements about what it is that -- his theory of how you calculate it. And he set out 12 steps for how you do calculate it, but he didn't follow those steps. He never provided -- he didn't follow all of those steps and he never provided data about the results

for any of them.
Q. What did you do to determine what Dr. Bates actually had done?
A. Well he was kind enough to provide us with an extremely large and complex backup data and the database.
Q. In what form was that?
A. It was an electronic database with a whole series of spreadsheets and other matters and computer code as to what his calculations were. Again, there was no section that explicitly was identified as his calculation of his liability. But we did -- one of my partners is Dr. Daniel Relles, who's a statistician and an extraordinarily capable data analyst. And he looked through that database and was able to find out in -- I mean, it's a huge database -- and he finally located tables that were labeled as their estimates.
Q. Could I have ACC-802A? Is this the table that you're talking about?
A. Yes. You can see there it's for pending and -- average payment for and total NPV of payments for -- both nominal -- at the top box is both the nominal and NPV for pending and futures. He breaks that down separately for the pending and futures in the two boxes below. And that's how we finally -- we were able to put a number on what his actual estimate was. That was not in the

report.
Q. So the total for what he calls "pending stock valuations" is this eight-digit number beginning with $21 million?
A. Yes.
Q. And his NPV number for the futures. Is this, again, an eight-digit number beginning with $97 million?
A. Yes.
Q. Now, working with that, were you able to discover or reverse engineer what he had actually done?
A. Yes. That's precisely what Dr. Relles did. He started with that number, looked throughout the database to see where it appeared, and backtracked from there to find out what the steps were used to derive it.
Q. ACC 803. Does this reflect Dr. Relles' work?
A. Yes. It shows that his number, the 216 -- the $21,629,000, which we saw the eight digits, is precisely the amount that Dr. Bates reported on the prior spreadsheet. And not only that, we now -- we determined the four steps of what he did. He started with his what's called "unreduced." That is basically the result of a regression analysis. Turns out we had to backtrack that too. And then he had a step to reduce it. And we were able to -- this is the entire set of calculations for his forecast, those four steps, and we were able to

understand and replicate each of those finally. And we replicated them to Dr. Relles. It replicated them to eight digits. He got it exactly right.

Q. ACC 808. Did you do the same thing for the futures?

A. We did. Although I think we're off $1,000 in the end because there are issues of timing and rounding on this. But we were able to replicate that as well. Again, it's the same four steps. There's a present valuation issue in here which also we were able to replicate.

Q. So that gave you an understanding of what Dr. Bates had actually done?

A. Well, it gave us great confidence that we finally had been able to figure out what in the world he did. It took a while to do this. I'd say we probably wasted about six weeks before we finally understood what it was.

Q. Could I have page 42, please? What does this table show?

A. This basically just elaborates on the steps that we just saw in the last two slides. The first of these are -- this is a description of what Dr. Bates did and the values that he calculated in the first column on the right side. The last column, basically, he calculated a total -- if every case went to trial, he estimated how

much money would be -- every pending case, he -- he uses 3,932 pending claims because, as I said before, he throws out a bunch of claims in a way that we think is improper. But he starts with a lower number than we do. We have 4,700 and some. He starts with that 3,932. He fits a regression model based on 367 jury verdicts. These are not Garlock jury verdicts. These are jury verdicts against anyone that's reported in a couple of litigation reporters, Mealey's, Westlaw is.

The jury verdict reporters are simply brief summaries of facts of a case and the outcome of a case, who the lawyers were and so forth. And from that he recorded both the amount of the verdict, the year of the verdict, the ages, whether or not the plaintiff is living or dead, and state which he categorized into three categories. There are other data available in these, but these data are available only for 367 jury verdicts. And so he only restricted himself to 367. Again, these are not Garlock -- some of them are Garlock verdicts, but most of them are cases involving different defendants.

He then took the results of that multiple regression analysis, which I'll discuss a bit more later, and applied that to these, what is the -- how does the age of a defendant -- of a plaintiff affect the value of his claim? How does being living or dead affect the

value? How does one of the -- his three state categories: How is that historically related to the difference of values in claims? He takes the results the coefficients from that regression analysis and is able to then forecast what is -- would be the value of all of these 3,932 if they went to trial.

This is not a -- this is not an analysis he described in his report or in testifying here. He didn't provide it in the detail that I'm describing it. Certainly, not -- maybe he did that. The whole set of materials, he did not describe it. Let me correct that. The whole set of information here was not described in the level of detail I'm providing.

Q. So he did the regression and then he had two more steps; correct?

A. Two more steps. The next step was he took that amount of money and he eliminated 1,755 specific plaintiffs from the -- from his data, based upon the Henshaw categories, basically. Henshaw categorized -- Mr. Henshaw categorized the pending claims or submitted PIQs. And on that basis, they deleted claims that didn't say they had a direct or indirect exposure to Garlock on the PIQ form. Basically, he's assuming that because on the date of their -- that they filled out the PIQ form they may have known they were exposed to gaskets. But if

they didn't identify Garlock, then their claim would never have any value. And so he eliminated those claims, which eliminated 44.6 percent of the value of the claims. I guess he did discuss that in his testimony.

Q. I misspoke. I said there were three more. There were still two more steps after that; correct?

A. After that there were. Yes.

Q. And what were those two steps?

A. He next eliminated what he -- what would be the liability share in his opinion borne by other co-defendants and trusts. He can -- for this he looked at a couple of databases. He had -- I think one of them of over 500 and one of them for 200 and some claims. And he had the -- the employees at his company reviewed these. As he described in his testimony. He had the employees in his company look through the PIQ submissions for trusts and the PIQs in the co-defendants and then documents that were attached to some of these claims.

These are claims that did the -- provided subsequent and supplementary information as part of their supplemental study. And so some people submitted depositions, some product ID lists, so forth. From that he looked at how many mentions there were in any of these documents. And he looked at ballots. He looked at who submitted trusts.

So he said if you ever filed a claim against a trust, you have -- they have liability, no matter what the status of that claim is. If you ever voted in a bankruptcy, that company has liability. It's a Herculean set of steps and assumptions, but those are his assumptions. He said if anyone names you or you're named as having been exposed to that company's product in a deposition, a co-worker deposition, whether or not that's been proven or established, you get -- that's a reliable co-defendant. If you filed a lawsuit against someone, even though that case is still pending and it hasn't been resolved, that company has liability.

So anytime someone's mentioned, that's a company that would have equal share to Garlock in the event that Garlock was found liable. So these are only cases where Garlock is going to be found liable. But other companies, it doesn't make any difference if there's a legal determination of liability. It's the mere mention of them in one of his documents is sufficient to create a setoff according to Dr. Bates.

Q. So for step four he divided by 36. What was found in step three?

A. This next step, by the way, eliminates on the far right what we call the 1/36 study. Garlock only has 1/36 of a reliability of every case. That eliminates 97

percent of liability.

His next step is, what fraction of claims would Garlock win? Here he looked at Garlock's experience in the 1990s. They had 36 trials. Plaintiffs won three. 3/36th or 1/12. So even in the 2000s Garlock won -- plaintiffs won 36 percent of claims. So in the 2000s, basically, plaintiffs won one out of every three trials. In the 1990s they won only one in 12. In other words, for every 12 cases that goes to trial, he's assuming forever and ever 11 of those cases Garlock would win, and the plaintiffs would only win one. That eliminates an additional 92 percent of the remaining liability, gets the liability pending claims which started at almost $17 billion and is up to $22 million dollars.

Q. Page 43. Did you find that he used the same methodology for future claims?

A. Yes. The last three steps are basically the same. He eliminates claims because now someone else didn't identify Garlock on a PIQ form, and he eliminates 40.6 percent. And steps 10 and 11 here are the same identical steps that I described before. And he uses his regression here. There is an additional reduction here. Remember we -- I forecast liability based upon all mesotheliomas filed against -- of all I start with in my future forecast, all the mesotheliomas that occur in the

country. Dr. Bates ran -- he didn't use Dr. Nicholson. He's familiar with Dr. Nicholson's work; he made his own forecast. It's a proprietary epidemiological forecast. One of his colleagues is an epidemiologist. But unlike Dr. Nicholson, his forecast is not published. It's not peer reviewed and it's never been tested by data like Dr. Nicholson has for 20-some years, or 30 years at this point.

So he uses his personal proprietary forecast which, in fairness, when he looks at all mesotheliomas in the country is very close to Dr. Nicholson. I wouldn't quibble with him. But he says only a third of those are not caused by exposure to asbestos. And so he eliminates a third of the mesotheliomas before he even starts. So his estimate of the number of future mesotheliomas, the $28,402 forecast, eliminates a third of the mesotheliomas. Because, in his opinion, those people couldn't have an asbestos-related -- an occupationally-related exposure to asbestos.

Two points about that. I mean, he's not a doctor. Three points. The second is this issue about what is the degree, if any, of what fraction of any mesotheliomas is not caused by asbestos is disputed in the medical community. So it's not a consensus that he's disagreeing with. And it's a very partisan issue. The defendants

have obviously argued that a great number of mesotheliomas have nothing to do with asbestos. The plaintiffs argue otherwise. And they each have doctors that argue their position. It's unsettled in the medical literature. The third issue is that if you get mesothelioma, there's no way to say whether or not that is an asbestos cause -- asbestos caused mesothelioma, other than looking at your exposures.

So if you can show that you were exposed to Garlock or anyone else's asbestos, it's an asbestos-related mesothelioma. If you can't, the doctors -- some doctors assume it's not an asbestos. So basically, it's a redundant step. And you can't start off by eliminating these cases and then later eliminate people that don't have an asbestos exposure, again, which is what he does. So that's another flaw which reduces his estimate. It's not reflected on this table.

Q. And then he does the same 1/36th and 1/12th?

A. He again reduces that. Let me say one other thing. His step for having taken out these PIQ forms, both pending and future claims and then eliminating 11 out of 12 claims, is, again, it's double discounting. He's taking them out and double dipping. Because if you have an exposure to Garlock and you have mesothelioma, those are the only people that get past step nine here or

the comparable step. Your likelihood of getting a plaintiff's verdict is quite high. It's not one in 12, but his one is 12 was calculated across all defendants who had not been pre-screened and removed already for the same reason. They're both being removed for exactly the same reason, about the issue of exposure to asbestos. So essentially, he's using that issue twice, reducing it twice, for the same reason.

Q. Let's focus in on the step that just involves 1/36, and let's assume that there was some reason to do it this way. Did Dr. Bates do this in a way that was unbiased?

A. No, he did not.

Q. Can you explain to the Court why?

A. Well it's an issue of how he calculated his average, the average numbers of the 1/36 average.

Q. What does page 44 show?

A. He had 512 cases that he used to identify the tort defendants' share. And he took the median number, that's the 50th percentile number, of the numbered counts reached by these 512 people. He counted how many shares he has, which is the number of mentions of another defendant in the ways I've described.

He then finds that the median, the 50th percentile, and that number could range from one to 200,

whatever. I don't know what the top of it is. But the midpoint of the -- half the people had had a number below 22 shares; half of them had above. So that's the median. For the 265 cases with trust shares, it defines -- identifies a mean. Now these are people that filed claims or indicated on their PIQ they had a claim. Those are -- there are 13 of those on average. That's the mean, the arithmetic average we're familiar with.

So that uses different -- it's a trivial issue. He uses these different means -- methods for identifying, he adds them together and he gets 35. Co-defendants when you add Garlock, it's 36. So he assumes, based on this, that in every trial there will be 36 shares, of which only one is Garlock.

Q. I would suggest to you, Dr. Peterson, that we have a typo in this chart, for which I apologize. I think where it says "tort" it should say "trust," and where it says "trust," it should say "tort."

A. I thought that was wrong.

Q. Well it's my fault, Your Honor. We just had the words wrong, but all the rest of the material is correct.

Now, when you do this calculation using a mean or a median, does that bias the result?

A. It's how he applies and calculates these that's the problem, using that is the problem.

Q. Do you have an example to show the Court of how it does bias the result?

A. Yes. Basically, his problem is that he calculates his average of 36 based upon the average number of mentions of another defendant. He should have done it on the basis of the average values of claims. And that may seem like a trivial nitpick, but I'll illustrate that it's actually a significant problem for him, and that's what these examples show. I'll do it with a hypothetical.

Assume that there are three cases that go to verdict. Ten of them are -- and he -- obviously, he doesn't have the values of these claims, but you can calculate the values for each of his 512 and his 200 and some claims by applying his regression analysis. So he can tell you for each of those cases how Garlock would value them.

The three verdicts, $100 each. The first verdict there was one defendant. The second -- so it's Garlock. The second verdict there was two defendants, Garlock and one other person, one other defendant. The third is there are three: Garlock, plus two. And so the amount paid in the first case is $100 by Garlock. Second, or any of the defendants, it was $100. The amount paid by each defendant in the second is $50, assuming that these

are equal shares. The amount paid in the third is $33. So if you add up what was actually paid, it's $183 across those three cases by any defendant. The average number -- the number of claims is six.

Down below I've added, basically, how Dr. Bates calculated this. We, again, have the $300 total across the three pages, and there are an average of two defendants. That's comparable to his 36. And what he does is he divides the 300 by the two. He says okay, on average, Garlock would pay $150 for this case. But what they really paid was $183, not $150. That's a 22 percent difference. He's lessening the value here. And it happens because you need to look at -- and you need to do his averaging by the values paid in each case, not the number of defendants. And so he does this the wrong way.

Q. Did you do this?

A. We tested this. We looked at, okay, what -- you know, we -- on this example it shows there's a 22 percent difference. But we looked at this: And what in the reality might it mean using the actual data? We had 210 cases that were among those that Dr. Bates used to derive his shares calculation. We looked at the number of shares that Dr. Bates' people found for each of these. And incidentally, obviously, I don't agree with that count. As I've described, I have great skepticism and I

think you can't do it. It's not meaningful. But I'm accepting for the moment that that's how he did it and showing that even how he did it, he's got this problem.

We then used Dr. Bates' regression analysis which, again, I don't accept. But I'm using it as a basis for putting values, because that's what Dr. Bates does. We put a value, according to Dr. Bates's regression, on each case, and came up with a total liability according to Dr. Bates' method of $913-plus million for these 210 cases. Dr. Bates' method takes that $913 million, divides by the 36 for his 36 shares, and says okay, the average verdict in this case is going to $25,000,300 -- I'm sorry. The total across these Garlock's share for the total liability here would be $25,379,321.

When we look at it on a case by case basis and for each case we calculate how many shares are reduced according to Dr. Bates and we reduce Garlock's share down by the number of shares for which they get credit in that case according to Dr. Bates, and then the total sum of all those we get $38,895,000. So it's more. It's 53 percent more. So by doing the method that he did, he eliminated 53 percent of the values of the claims. Now that would imply that, rather than just 36 shares, there should only be 23.48 shares. The values of the share analysis is equivalent to 23.48 shares, not the 36

shares.
Q. This is based on Dr. Bates' own data?
A. It's his own data. It's using his assumptions and calculations of shares. And it shows that this -- there's a great overreduction in the values of the claims. Even if one accepts everything about what he's done he's overestimated the impact of the share analysis significantly as we've described here.
Q. Let's turn to the 1/12 or the 3/36 issue.
MR. CASSADA: Excuse me before you go on. I didn't want to interrupt the testimony. May I just reserve, until the end of the testimony, objections to matters in this case?
THE COURT: Sure.
MR. CASSADA: A new criticism that was not disclosed in the rebuttal report.
THE COURT: Yes.
MR. CASSADA: Thank you.
BY MR. INSELBUCH:
Q. Let's move on now to the 3/36 or the 1/12, the final multiplication.
A. This is our shorthand for when you put together Dr. Bates' analysis for the shares and his jury verdict assumption of 1/12. Trial Results. Probability of win.
Q. Turn to page 51.

A. Yes.
Q. What does this chart show?
A. Well the first row is what Dr. Bates does for pending claims. So he calculates based on his regression of the average value of a verdict for the pending claims would be $4,294,000, setting aside the cases, the 44.6 percent he eliminates based on PIQ. There's a 36 percent share that he assumes that there would be only three wins for plaintiffs out of 36 and 1/12. That's 38 percent. This is just applying what he did. It said the average value of a claim is 9.941; omissions based of PIQ is not pertinent to this calculation. If you applied, instead, the 23.48, which is the proper number of shares that he should have done, you get an average value per claim of $15,242. If you -- that's the effect of his error in his share analysis.

If you do what I regard as the serious error with regard to this parameters, measuring the probability of the plaintiff victory at trial, he -- the first row is what he does. He has -- he assumes -- and if you look -- this is their actual history. If you look at the cases that were paid in 19- -- in the 1990s, the cases for which we have data on both the number of -- the amount of money in the verdict, compare it to what Garlock actually paid.

They paid on average -- there were 3.4 shares, actually, on average in the cases that Garlock lost -- that's three of them in the 1990s. And so rather than using the -- his 36 or his corrected 23.2 reduction, you say okay what's their actual experience? Their actual experience is there were 3.4 shares. So you use that number, it's real history. And if you then use the 8.3 percent plaintiff wins that he assumes, you get an average value of claims of $58,693. That would be Garlock's share with those two reductions.

If they only would win one of eight, then that would suggest, across all trials and all pending claims, the average value would be $58,693. Adjusting, for its actual shares in the 1990s and its actual wins in the 1990s. If you looked at what happened in 2000-2010. There in the trials in that -- the 17 wins in that case, the average total verdict was $4,280,000, and the average shares in 2000s was two. There was one defendant other than Garlock paid on a claim.

So you use that share reduction, two, not the 36. You use its actual trial outcomes winning -- the plaintiffs winning 36.2 percent. That would say that the average verdict value for the pending claims is $775,000, not the $9,941 that he uses.

Finally, if you look at the whole 20-year period.

I would suggest to the Court that the 2010 -- one to 2010 is the proper period to use here because of all the changes that I went over in the 2000s when I was describing the history of the litigation and how it impacted Garlock. It changed the litigation in ways that will never be like the '90s again. But if you use the longer period and relax that set of concerns I have across the whole period of the two decades, the average verdict was $3,963,000. The average shares was among 2.1 -- 2.1 defendants that's Garlock, plus 1.1 on average co-defendants. The Plaintiffs won 24.1 percent of the 838 trials across that 20-year period. When you use all of that, the average value of a claim -- pending claim, according to Dr. Bates' analysis, again, it's not $9,900, it's $458,843. These two steps in their ignorance and avoidance of actual data produces extraordinary distortions in this results.

Q. Now turn to page 52, please. And show us how -- does this chart show us how, if you corrected for these distortions, you would have a tremendous difference on Dr. Bates' estimate?

A. Yes, it does. Again, it's just these two issues. Obviously, there are many more issues with regard to the quality of his work here. But just those two issues, yes, that's what it does.

Q. Now just so we can tie this together. We start with what's called the "adjusted for no-contact." Can I have, for just a moment, page 42? That $9,348 is the value that Dr. Bates used after eliminating whatever claims he eliminated and applying his regression value to the total?

A. That's correct.

Q. That's the one we saw for the presents. And can we look at page 43 for a minute? There we have $53,774,000. That's the number that he starts with in the same place?

A. Yes.

Q. And in fact, just to go back to 42 for a minute. That 9,300 -- I'm sorry, the $9 billion 348 number. If we go back to ACC-803 for a moment. That's the second number that was reverse engineered from his final estimate.

A. Yes.

Q. All right. Just so we know what we're working with. We'll start at page 52, again, please --

A. Yes.

Q. -- with Dr. Bates' number. And we're just correcting for the 1/36 and the 1/12. Describe the results.

A. Yeah. We're accepting for purposes of this

illustration his PIQ no-contact assumption, yes, and we're accepting his regression. The first is if you change the number of shares to the 23.48, not the 36. You would reduce his -- each of these significantly, but you would end up with a total liability of $2.688 million, $2.7 billion dollars. Then if you take the 36 percent win rate of the 2000s, you would come up with $972 million. So his forecast, just correcting for these two mistakes or errors or biases, would produce a liability of $972 million and not the $120-some million that he says.

Actually, I don't know if this is NPV. This is not NPV. It isn't. So that comparison's a little different. But still, there's a six, seven-fold order of magnitude difference here if you just fix these two problems.

Q. Now this one uses a correction based upon the trial win-loss record for the year, the decade of 2000. What would happen if you used the old -- the entire results from all of their work? 54. I'm sorry, 53.

A. The $900 million becomes $648 million. Let me correct something I just said. The bottom is actually Dr. Bates' forecast. And so this is not -- did not present value number. So you compare the $972 million on the prior slide with the $146 million which is his

non=NPV numbers, as is ours. And on this slide if you -- if you accept his win rate from the period that's no longer like what litigation is today, the 1990s, you get $146 million as opposed to -- you get -- you correct that. You get $648 million compared to his $146 million. So these are -- again, these are significant problems with his analysis.

Q. Let's turn now to your review of Dr. Bates' regression. Do you have a view about Dr. Bates' regression methodology?

A. I have many views about his regression analysis.

Q. Well let's start with the first question of, would Dr. Bates' regression actually predict the actual Garlock verdicts?

A. No.

Q. How do you know that?

A. We've looked at it. We've seen that it doesn't predict actual verdicts. It's not helpful.

Q. How did you go about making that determination? Let me have 56.

A. Well we took its actual verdicts in the 18 cases that were tried that's shown on the left. We compared it with his prediction of what the -- again, using his regression. His regression looking at age, living or dead, and his three state categories.

Q. So you applied his regression methodology to the facts of the cases in each of these actual results?
A. Yes. And presumably these would have been the values he would have put on them using his regression.
Q. In each case these are all divided by 36; is that correct? The predictions.
A. Yes.
Q. And the actuals.
A. Yes. This is what they would -- yes, this is what they would be. No, the actuals aren't.
Q. May I have a minute, Your Honor? I believe the predictions have been divided by 36 but the actuals have not.
MR. CASSADA: Objection. No foundation.
THE COURT: Overruled.
THE WITNESS: That's right.
BY MR. INSELBUCH:
Q. Okay. Now I have a foundation.
A. That's why when I looked at it that was clear that it is.
Q. Now, did you -- did you look to see whether these predictions in any way were related to the actual results?
A. Yes.
Q. And what did you find?

A. Well we plotted his predictions by the actual verdicts, which were the two columns on the last table. In each case we have both values. So along the bottom, it's the Garlock actual amount. The vertical is Dr. Bates' forecast.
Q. Now, were you in court when Dr. Bates testified?
A. I was not.
Q. Did you read the transcript of his testimony?
A. Of that part of his testimony, yes.
Q. And did you find in that testimony a place where I asked him whether or not there should be a relationship shown between their predictions and the actual torts?
A. Yes, I did.
Q. And what did he say about that?
A. He said many things about them, the first of which --
Q. Is there a part of his testimony you'd like to show the Court?
A. Yes, there is. I've got it kind of buried here.
Q. Tell Mr. Walker the page number.
A. It's page 2,968.
Q. What lines would you like us to look at?
A. Well, first, at line 17 and 18, and the question that begins at line 11.
Q. The question says, "Now these are the cases I'm

talking about." I'm now reading my own question. "What we did is, we took a look at that and we made a list -- put up ACC-809 -- for the same cases. And we put in here what Garlock actually paid. And we tried to see whether there was a relationship between what actually happened in these cases and what the prediction says should happen in these cases."

And what did Dr. Bates -- what did Dr. Bates say that you want to comment on?

A. Well he said, "First of all, that's not what the column is. The important part is these are apples-to-orange comparison." He's saying what he's forecasting is not what they actually -- what their verdicts were. And he goes on to the next page to discuss that more at page 2,969 at lines three and four. "These are not the same thing. This is not a test, that's -- one's not testing the other."

Then at line eight and nine -- start at seven. The operable part is at line eight and nine. "These are a small number of selected cases, right, that are not going through the process which we're talking about which is the prediction of the case in a fair trial."

Dr. Bates distinguishes his forecast. It's not about the actual verdicts. He's not attempting to predict the actual verdicts. That's what he's telling

us. That's an apple and his forecast is an orange. What he's doing is he's doing what Garlock asked him to do, is to make these three assumptions about the -- about all cases going to trial. And the trial is under circumstances that don't obtain in the real world, including that the plaintiff must -- first of all, that there's going to be 50 or 60 or a hundred defendants in this case, and that for each of them the plaintiff will reveal every piece of information available to the plaintiff about the -- where the plaintiff worked and his exposures.

Garlock, on the other hand, doesn't have to reveal anything. Garlock knows a lot about exposures. They know basically to a great degree where their products were sold. They know, more importantly, about their litigation for 40 years. They know about sites where their litigations have been identified. That's a part of the working knowledge of a good defense lawyer, and they have good defense lawyers. But Garlock is not obligated to reveal to the plaintiff or the Court where those exposures were.

It's like these PIQ forms. The defendant is supposed to identify whether or not -- they know they were exposed to a gasket. They're not sure -- in fact, most of the cases where they're not sure, the plaintiff,

the injured worker, was dead. So his survivors have not yet figured it out. Garlock would actually have information about that for many of his cases. But Garlock, under their -- under his fair trials, under Dr. Bates' and Garlock's fair trials, the plaintiff has to tip everything he knows but Garlock doesn't have to tip his hand -- doesn't have to tell what it knows.

And that's what his forecasts are about. He's not forecasting actual trials. He's not -- and if the Court expects that the experts in this case are telling the Court what is the value of the assets that these claimants hold, the value of their claims? What is the value of those claims in the system in which they've been processed? And as I expect and think we're expected to assume, they would continue to be processed and there would be no bankruptcy.

If the Court is expecting testimony about this from Dr. Bates, it's not getting it. It's getting his whole effort, and he articulates this quite clearly here, is to forecast a false world, an imagined world, not the world of actual asbestos litigation. And he confirms that again.

The page 2,970, line nine through 14.

Q. The question is, "This is the relationship we found between your predictions and actual payments in

dollars?" And the Court will remember that at that point we showed him this random mix.

And he answers, "Not surprising, since the two aren't -- one's not a prediction of the other. You wouldn't expect to see the particular pattern you describe between two things which were related."

A. The last statement in particular is telling, although the whole statement is problematic. But his last statement is that if in fact his prediction was related to jury verdicts, actual verdicts in the tort litigation system, you wouldn't expect to see a -- a good prediction wouldn't have the pattern that you showed him.

In other words, if he -- if there was a relationship between what he's predicting and the real trials, you would have a pattern that was different from the actual pattern you've shown him.

Q. Would it be something like he scribbled on the board here?

A. They should -- they should kind of center around -- there would be variability, of course, because one's a prediction. But they should have a pattern of going upward along a diagonal.

MR. CASSADA: Your Honor, I'm sorry to interrupt but I would point out that the language in the transcript. The last word should be "unrelated."

THE COURT: Okay.

MR. INSELBUCH: I don't think so.

THE COURT: Well I'll let you all hash that out.

MR. INSELBUCH: I think if you parse the language he means this. We understood Dr. Bates to be saying that you wouldn't expect to see a relationship because what he is doing is not related to what the actual verdicts were. That's what we understood him to be saying.

THE COURT: All right.

MR. INSELBUCH: However, the language wiggles around.

BY MR. INSELBUCH:

Q. Now, can I have 58?

A. Well it goes on in the next answer to elaborate on that.

Q. Okay. Go back to where you want to go.

Question: "You would not expect your regression analysis to be able to predict Garlock verdicts?"

Answer: "Those were Garlock payments on a selected group of claimants in terms of what I described there versus what would be Garlock's expected liability extended across groups of claims, in trials that are fair trials for the information that and all parties are treated symmetrically with regard to the liability, not

targeted selectively with part of the information withheld."

A. Can you go on, Mr. Inselbuch? Please go on.

Q. Go on?

A. There's more to the answer.

Q. "So they're not the same thing. You can't value -- you cannot use one as a basis for 'validating the other.'"

A. I think that makes it clear that what is stated here is exactly what was accurately obtained in the transcript. That's consistent with the next -- that answer you just read.

Q. 58. So, to summarize your comments on Dr. Bates' regressions.

A. Well, first of all, he certainly doesn't capture the actual verdict trends. That's the first point. The next two pertain to additional information about problems with his forecast, and that's shown on the next slide.

Q. 59. What is page 59 showing?

A. This deals with just one of his coefficients, one of his variables, and that's age. Age is really important to Dr. Bates, because age is the basis for his assertion that there is no liability for claims that settle under $200,000. It's a fundamental assumption of the repeated assertion of Dr. Bates and by Garlock that

there's no real value in these claims and it is because of how he deals with age.

But one problem with regard to age in his regression. This is the results of all three of his variables. The green line is his forecast. I mean, what I've done here is I've just -- for claims that -- actual verdicts. This is based on the actual data. This is the source data that Dr. Bates used to calculate his regressions. Now, a decent regression analysis should be able to take -- you should be able to take the results of that regression and apply it to the data that's the source of your analysis and come up with somewhat of an approximation of the underlying data. It won't be perfect. His regression doesn't explain very much of the -- a regression is intended to explain why claims vary.

A good regression would be able to explain a great deal of that variation. Dr. Bates is not at his -- on its face, it's not a very good regression because it doesn't explain very much of the reason that verdicts differ. That's not surprising, because so many things affect verdicts. Three things -- I don't think there's any lawyer outside of this courtroom that would believe that there's any possibility you could reasonably predict verdicts based on three things. There's just too many things -- too many things you can't measure. So it's an

implausible assertion in the first place, and this just shows why.

His green line. Okay. What is his prediction of size of verdict by year? So he took each of the verdicts in 2001 and 20004 and applied his model, his formula, to the claims in that year and said okay, what is he predicting would be the size of the verdict? That's his green line. The reason the green line goes down, and it does go down, is because he found that there is a slight reduction in size of verdicts by age when you compare plaintiffs that are 20 years difference in age that there would be about 14 percent difference on average in the value of the verdicts, because he would attribute that to the fact that one's older. He'll have explanations for that. He does have explanations for that.

So because as time goes by, the average ages of plaintiffs get older and older, the average value goes down. He actually takes that finding, his supposed finding, and runs that out for future claims. Obviously, future claimants 40 years from now are going to be a lot older. So based on that finding of age, he essentially reduces the value of future claims to nil because he says they're old; they're not worth much.

But in fact, if you compare -- so this is -- the green line is the actual forecast of his regression. The

black line is the actual verdicts in those cases. This is all of his cases that he used for his calculation. The black line doesn't go down over time. It goes up. It goes up substantially over time. So he's saying okay, verdicts are going to go down over time because age is -- people are aging. If you can't even match the source data from which your regression is derived, you've not validated your regression. You've cast great suspicious -- suspicion on the quality of the regression, and that's what this shows.

We took his regression and we added one variable, a time variable. There's two variables that deal with -- that affect the values of claims related to time. One of them is age, because age changes over time. The second is the year of the verdict. Verdicts have been going up over time. He only runs one of those two. If he included both age and the year of the trial, he would have gotten a line that much -- that goes up like the actual verdicts, and it would have been a much better forecast. But he didn't do that. Because if he added the year of the trial to the regression analysis, the -- and that's a far more important -- that's a much stronger -- it's more related to the overall values of the claims, the year in which it was tried than his age.

So he omitted the most important time variable and

the man's age. If he included the year of trial, he would have added upward trend, and the values of future claims would be far higher. He's basically cherry-picked his forecast by only using one of the two verdicts -- time values. But he's also invalidated his verdict, his verdict analysis and his regression, based on it because he can't -- he can't even represent reasonably the data from which it was drawn.

Q. Your Honor, would this be a good time for the afternoon recess?

THE COURT: Are you about done?

MR. INSELBUCH: No.

THE COURT: Okay. Then let's take a break until 4 o'clock.

(Off the record at 3:51 p.m.)

(On the record at 4:05 p.m.)

BY MR. INSELBUCH:

Q. Before moving on, please go to page 56. I think we may have been confused about what this table presents. Dr. Peterson, would you tell the Court what these two columns "actual" and "prediction" are?

A. They're both payments. They both represent payments. The prediction model is Dr. Bates' regression analysis reduced for the 1/36 fraction. The "actual" is the actual amount of money paid in these cases, not the

verdict amount. It says "Garlock plaintiff verdicts" at the top but these are both really payment amounts. So in each case it's whatever the share was in that case. It reflects their actual payment. And in no case was it 35 codefendants. It's whatever happened to be. We've already reviewed them.

Q. 59. Once again, could you just tell us what this black curve represents?

A. The black -- this is a table of verdicts by -- average verdicts in each year, the years along the bottom. The scale is a logarithmic scale we all use, and the black line represents the average verdict in the highest point in. 2010 the average verdict values in 2010 is represented by that peak in 2010. In 2011 the average verdict was lower.

Q. And the green line?

A. The green line is the average verdict according to Dr. Bates' regression. The key point about these is the slopes of the lines differ. Dr. Bates says verdicts are going down. They're actually -- the verdicts that he used for his calculation, he said they're going down, according to his model, and actually they're going up. The fact that they intersect and cross each other is a clear demonstration of the fact that these are different things.

Q. Let's move on to another subject, Dr. Peterson. I think we've all heard many times in this courtroom that Garlock takes the position and Dr. Bates takes the position that only cases that settled above $200,000 reflected the settlement of cases where Garlock perceived there to be some risk of liability, and that for cases settled below $200,000, Garlock settled those cases purely to avoid costs, believing that there was no risk of liability in those cases. Now, have you done an analysis of that?

A. Yes.

Q. Point of view?

A. Yes, I have.

Q. And what have you done to analyze that?

A. Well, first of all, I -- remember I've been studying verdicts and settlements for 40 years almost -- 35 years.

Q. This is not verdicts, sir, this is settlements.

A. Both. I've been studying settlements. I've talked with plaintiffs' lawyers, I've talked with defense lawyers, I've talked with insurance company people, and I've talked with plaintiffs and I've looked at data for dozens and dozens of cases. Every -- as I said earlier, every mesothelioma claim that has a product identification is a risk to the defendants. To say that

there is no liability in those cases is just in my -- it's completely contrary to everything I've ever heard, know, learn, everything I've ever been told by everybody on this. And it's not controlled by the defendant's costs. The defendant's costs are clearly some consideration to the defendants, just as plaintiff's costs are.

What's really happening is that settlements are so far below the verdict values Dr. Bates uses that to assert, oh, the only reason they're so low is because you wouldn't -- if you really had a good meritorious case -- he's said this. If you have had a meritorious case you wouldn't take such low money, but he doesn't understand the process. He hasn't had the opportunity to have the discussion with a wide range of people that I've had.

What really happens is that the plaintiff, when he's considering settling a case, has a conversation with -- the plaintiff's lawyer has a conversation with his client and he says, look. I mean, kind of following the thinking of Dr. Bates, he'll say we could try this case and if we did you might get $4 million. There's certainly no certainty. I mean, he wouldn't have a precise number. Lawyers don't do that. They don't think that way. They know better. But he could say this case could have a big verdict, maybe $4 million; it could be

more, could be less. On the other hand, you could lose it. There's a good chance you would get nothing. You'll get no money out of this.

And in any event, we wouldn't be able to get you that money for three, five years because it's going to take time to go to trial; and this is Garlock, and Garlock always appeals. They say that. They tell us that. They put it -- they publish it. We're always going to appeal and that's a couple more years. So you have a chance; you might get a lot of money. But if you do, its's going to be years in the future. You've got a big chance you'll get nothing.

You say this to a man who's 75 years old or 65 years old, or whatever, who's dying. He's been told he's dying. He knows he's going to be dead within six months or a year. His concern is, you know, kind of, what's going to happen to me for those months? But more importantly, typically, what's going to happen to my wife? To my family? What can I leave them? You tell him, you know, you might -- you might hit a jackpot here, but you're likely -- you have a good chance you're going to get nothing. And in any event, your family's going to not -- will get nothing for a period of time until then. On the other hand, I can get you $50,000 here. I've got a bunch of other defendants. I can get $50,000 from each

of them. So we can put you -- put together $500,000 and we'll begin getting that for you within a month or so.

That's the choice that the plaintiff's lawyer presents to a plaintiff. That's what they always present to them. And in that situation the plaintiff is very likely to want the money now. He needs the money now. That's the real -- that's what's happening. And you take that $50,000 to Garlock and say we'll settle this case, and you negotiate about it. But you make an offer and they both have a pretty good idea it's going to be $50,000.

Garlock's not going to think about its defense costs. It didn't get to that point because of defense costs. It got to it because it can get this case cheap. It can always get the case cheap, except in a rare circumstance where either Garlock or the plaintiff's lawyers want to hold out and really make some point in the litigation. That's what's happening. It's not driven by the defense costs. It's driven, really, by the great financial need of the plaintiffs and their age and their circumstances.

So when you do that, when the plaintiffs do that, Garlock has a strategy. Okay. We can get -- we can make these deals quickly. We can get these cases out cheap. You know, a lot of them will have liability. We don't

know which one will or not. They all have a risk. They've got product ID. They've got mesothelioma, and that's what the process is. Now we looked at this empirically.

Q. And what did you do and what did you find?

A. Dr. Bates asserts that, basically, very few claims have -- present real liability, and he does that based upon his analysis of age. As I mentioned earlier, he has his model which is -- he uses age as a proxy, essentially. And this is the same thing that his company, Bates White, did in the Bondex case. He says age is equivalent to liability. I can't measure liability.

In fact, I mean the -- to me the kind of ironic part of it is that the liability's rarely determined in an asbestos case except through the liability of a settlement contract. Liabilities -- these are unliquidated claims. Liability only gets determined at the end of a final judgment. That rarely happens. We never know liability. He says and he knows you don't know liability, he says, so I can't measure it. I can't really say anything about it, but I'm going to say that age represents liability.

And so if you're younger, there's more liability. If you're older, there's less. And so I'm going to run a

regression to see how the actual settlements are affected by age. He runs the regression for above $200,000. He says okay. Here younger people get more money. So there's liability. Because age means liability. Age equals liability. It's a proxy. They called it a proxy in Bondex; they treat it as a proxy here. And he says okay, and I'll run a regression for $200,000 and under.

Interestingly, $200,000 is treated as a small payment. $201,000 is a big one. He says okay. For this group, I find that there is no difference in the amount of money that they settled for based on age. And therefore, since they don't vary, that means that liability is zero because we know the age is related to liability if your Honor runs the liability. The only reason that we should see this pattern is because there is no probability of the plaintiff's victory. There's no liability at all. It's issues about how much. Whether it's big or small liability is irrelevant, and that's a flat line. That's his argument. And so he presents his results, and that's the point he made.

From that basis he goes on, including in his economic liability, that there's no liability including in all the models that he presented in his testimony earlier this week. He says no liability. That's the basis for that conclusion. But his choice of $200,000 is

the threshold between cases that have liability and those that don't have liability is arbitrary. There's no reason he had to pick $200,000. It could have been another number. So we said okay, that's an arbitrary number. Let's set it at $10,000 and we will run a regression at $10,000 over and above. That's what we've done.

Q. Chart 62. What did you find when you did that regression?

A. Well, the first line is -- these are -- these are the age effects -- coefficients from, basically, the age effects from his regression. The coefficients --

Q. What does the "coefficient" mean?

A. It is a measure of the amount of the variance of variability in your settlements that's associated with the variable of interest. As age differed, you would -- you multiply the age of a person by the coefficient to find out what the difference is.

Q. So, for example, if you had a person of a particular age and you wanted to assume he got a year older, there would be a decrement in the amount he would receive of .67 percent?

A. Yes. It's a negative number.

Q. Okay. Go on.

A. So he gets a coefficient that's reflected here.

We ran a regression at 10,000 and get the regression shown here. So, essentially, we've moved his line down from $200,000, greater than $200,000, to greater than $10,000. This is -- he says when you include these claims, since there's no -- there's no liability there, that you should get a flat line or you shouldn't get a very increasing line. It's a statistically increasing line. Well we find that there's very little difference in those two lines.

Q. Page 63. What is this?

A. These are the two lines. This is the line -- the blue line is Dr. Bates' regression line, how the settlement amounts -- these are, again, log dollars. The settlement amounts change with age. He finds that for people above $200,000 settlement amounts decrease steadily. The coefficient gives them a straight line. That's in the slope, the degree to which it declines. The slope is really what's being measured by the coefficient, and that's what you see here. That's his calculation. The red line is when we did it at $10,000. Well, this slope is no different. So if he had picked $10,000, his assertion would have had to have been any settlement above $10,000 as liability. But instead, he picked $200,000 and he settled below 200. I mean, well, most cases are below those two numbers.

Q. Now, are these two new lines in different places because of the amount of settlement? Is that correct?
A. Yeah. He started measuring the claims above $200,000. That's why the blue line is much higher. The point is the degree to change his whole argument is based upon how much -- what percentage changes there in a settlement amount based upon the age of a plaintiff. And these -- those lines are basically the same line. We've demonstrated that on the next page.
Q. Page 64.
A. Here we've just essentially moved them together.
Q. Are they the same shape?
A. Well they're straight lines, so they're the same shape. But they are the -- I mean, there is a little bit greater change over time but that's not significant for the -- for his analysis based on $200,000. The degree that his statement is accurate for settlements above $200,000, it's accurate for settlements above $10,000. So his conclusion that everything below $200,000 is without value is not a correct statement. Given, this is all predicated on the assumption that his age analysis is a proxy for liability. I mean, that's a -- to me that's a ridiculous assertion.
Q. Did you check or go back over the same concept to see what other predictors might exist?

A. Well, yes. We know that age is not strongly related to --

Q. Now in his regression, what three factors did he use?

A. He used age, whether the claimant was living or dead, and the state.

Q. Did you take those other two factors and do the same analysis to see what would result?

A. Yes.

Q. And would you tell the Court what you found?

A. Well his regressions have already shown that living or dead is a far more important predictor of the size of a verdict than age. If he was going to pick a proxy, being living or dead would be a much better proxy. We also find that stated -- now he used a very poor variable for state.

We looked at another regression that, rather than using his variable, looked -- compared the effect of being at trial in California or New York as opposed to any other state. And so that's what this analysis is. It shows these are -- this is -- the first is his coefficient for age. You've seen that .0067 before, -.0067 for settlements greater than $200,000. Below $200,000 it's a flat line. That's what he's told us, and he's correct.

Look at for living mesos. For living mesos -- when you calculate living mesos the coefficient is much greater than and the state variable we have is much greater. Those are both greater. They're more important than age. And so for -- but they differ. The coefficient for the regression above $200,000 is considerably less for both of these variables, living meso and California are, than for under $200,000.

Now if you buy his premise that the degree in which liability's important to a settlement is -- can be measured by these proxy variables then this tells us that age would suggest using his $200,000 split; that age would say that it makes a difference above $200,000 but it doesn't below. If you use the better variables, both of these are better variables, living mesos or California and New York. They're more strongly related to verdict and settlement amounts than his age. If you use those, the reverse is true. The effect is much greater for settlements under $200,000 than above, and also for California and New York as opposed to not California and New York.

So that tells us that the effects of these variables is stronger at $200,000 which would say, according to Dr. Bates's theory, that liability's an even more important concern for claims under $200,000 than it

is above. It's the converse. The results contradict what his overall assertion is that there is no liability under $200,000, keeping his same $200,000 level.

Q. Chart 67, please.

A. We show this graphically. The first pair -- the blue line is the results of the settlements of his regression for settlements above $200,000. The red is for the settlements below $200,000. This is Bates' -- Dr. Bates' analysis. You can see that for a 20-year difference the verdicts change by 14 percent in the higher value claims, and they don't change at all for the lower value claims. But when you look at it among living or dead, being alive increases the size of a large verdict above $200,000 by about 13 percent. And it makes about an 80 percent difference in the value of claims for people who are living.

So there's a much stronger -- according -- again, I don't buy into his theory. But when you're accepting that and assuming that he used living, he wouldn't have been able to make his assertion. California or New York is the same thing. It's actually negative -- being from California and New York is negative for the big cases, and it's positive, again, over 65 percent. Both of those effects are much stronger; they both contradict his assertion of no liability. It is -- It strikes me that

this is not -- it's not -- no credence should be given to that.

Q. Your Honor, we're going to turn to a new topic. I'm going to ask Dr. Peterson to respond to Dr. Bates' criticisms of Dr. Peterson's report.

What about 69, Dr. Peterson?

A. Dr. Bates makes a number of criticisms, and we would be here much too long if I addressed every one of them. I, basically, find few of them have credibility, plausibility. At best, some of them are just differences in judgment. He lists seven -- six of them -- seven of them. He starts off with our forecast and then says okay, I'm going to make seven corrections to Dr. Peterson's erroneous forecast. And at the end we go from $1.2 billion of liability down to -- the value of asbestos claims down to $320 million, I believe, is the number. So I'll address those point by point.

I've colored four of these red because I have some backup material that I would like to share with the Court for those issues. Three of them are quite trivial and don't need that, and I can just describe numbers two, three and four. Number two is something that he says makes a four percent difference. So in any event, it's a trivial issue and that arises from the fact, as I mentioned earlier in my testimony, that for pending

claims we assume that they get paid on average within the first three years, 2010, 11 and 12. But for convenience, we just put -- our calculations have that all those claims get paid in 2011. We're really assuming that a third of them are going to get paid in 2010, a third of them in 2011 and 2012. But they average all at 2011, so it's convenient to put it there.

There are slight differences in the inflation adjustment in the NPV adjustments that we made for those three years. They're trivial because it's only three years. If we actually did what Dr. Bates wanted us to do and split those claims equally across the three years, it would reduce our forecast by less than one percent. So it's a trivial matter. It's a trivial criticism.

The next one, account for vintage of claims at resolution. Here we did not eliminate claims, older claims. And I've testified before, we still find that the likelihood of a claim settling six, seven, eight years after it's been filed continues to be about as high. It doesn't go down. The probability of each year if you're still around, then the probability of your settling is not really -- doesn't deteriorate greatly.

There are a number of cases, a number of periods of time, when those values are very high. On average they're a bit lower. But the problem is that you can't

do a very good analysis because there's a confounding. The cases that are 11 years -- that have been around for 11 years after filing were all cases that had been filed many years ago in a different era. Cases that are filed in the last three or four years, or the five years of our calibration period, you can't look at 11 years of experience; they haven't been around that long and that complicates any analysis. We again looked at that and found, okay. If you drop cases that are way out there, like six, seven years out there, it would have an effect of a couple of percent -- a small percent. We didn't do that. We regard that as insignificant immaterial adjustment.

If we had it certainly counter-balanced by the conservatives and their views in Nicholson. So it may be our forecast is slightly overestimated because of these old claims issues, but we don't believe there's a very good way of calculating how much that is. Anything is arbitrary, and so we tolerate that as a criticism that perhaps our forecasts are a bit too high for that. Certainly not to the degree to which he makes that adjustment. He does an inappropriate adjustment. But it's in the opposite direction of the error that probably arises from our use of the Nicholson data that may be too low in the future.

The fourth issue about the inflation and risk-free rates of return. That simply is the -- we're each following the expert judgments of the financial analysts working for our respective clients. Dr. Bates says that the rate of discount rate should have a risk built into it, which means, essentially, that you're forcing the involuntary creditors, who are asbestos claimants, to bear the risk of investments in the future, and they should bear that risk and Garlock should get the benefit of it by having a lower estimation.

Every case I've ever been in and every academic paper I've ever read about this subject is that involuntary creditors should have a risk-free rate of return. And that's what we use, and we use what -- but that wasn't our decision. That was what the decision of the financial analyst was.

Now I can discuss the four points that I have data on.

Q. Which one do you want to address first?

A. Well, let's go in order.

Q. All right. Turn to page 70.

A. Dr. Bates criticizes both Dr. Rabinovitz and me for not having made changes to the Garrison 2011 database. I was in court earlier when the Court addressed this and recall that the Court said you just --

each use your own, whatever you think is the appropriate, data. The reason that we didn't make the biggest of those changes -- there are a number of changes. One of them is that he would change the settlement amounts and the time of settlements based upon discussion that arises -- rise in the meet and confer sessions that occurred in this case.

Well, I regard the -- those discussions in the meet and confer as basically new settlement discussions between the plaintiffs' lawyers and defense lawyers. And if they've changed their decision mutually, just changed their decision about a case based upon those discussions, that's something that may well have occurred if tort litigation had gone on and they talked further. But those discussions didn't occur. And we don't know if they would have occurred in the same way that they did in a meet and confer in the bankruptcy case, because here they're looking at what's going to be the allowance in the bankruptcy case. If it is a settled case, the case was typically given that settlement value for purposes of a trust. Some plaintiffs' lawyers don't want to have the historic settlements. They'd rather have the trusts recalculate the value based upon the TDP.

Dr.- -- Garlock has a strategic interest with regard to the total values of claims. So there are

incentives that exist within the bankruptcy process that affect that discussion that don't exist in the tort litigation. We believe that, generally, it's inappropriate to change the data based upon these kinds of discussions. They're tactical. They tend to be done for strategic interests of the particular parties which are different from what the tort litigation is. The most important issue has to do with his removal of mesothelioma claims because the plaintiff's lawyer said it's not a mesothelioma claim.

We don't think that's appropriate. And I need to explain that because it seems like we're denying reality. The reason we don't do that is, this is an issue that we've confronted in case after case. We know that the categorization of claims in the Garrison database is going to be wrong to some degree. It will change over time; it always does. And so what we do typically and we've looked at here is, how did it change over time historically in the past for Garlock?

Some cases that say they're meso now will turn out not to be meso when you look at the data five years in the future. Some cases that aren't meso now that are called "lung cancer" will turn out to be meso. There's shifts both ways; we call that a transition. We know that's going to happen. We have great experience with

regard to how that happens and what the effect of that is. The effect of it, typically, is to increase the number of mesothelioma claims, and that's what our analysis showed here.

This slide shows what we did. We have two databases. We have Garlock's 2005 claims database and we have their current database, the Garrison May 2011 circa 2010 data. Going down the rows are the counts of mesotheliomas that were in the 2005 database. There were 342 mesos, 328 lung cancers and so on. When we look at what happened to those claims we find that in 2010, 98.7 of them are still mesothelioma, but another 1.3 percent of them are no longer mesothelioma. Some of them are lung cancers and so on. So those are subtractions.

On the other hand, there are additions. Claims that were other diseases in the 2005 database, lung cancer -- there were -- of all the lung cancers among the 3,268 lung cancers in 2005. It turns out 1.1 percent of them are actually mesotheliomas, and so on down the line.

Now when you get down to the unknowns. There are 102,993 unknown claims in the 2005 database. Of them, 1.8 percent become meso. That's a lot of additional mesos. So what we did is we used what we call -- this is our transition matrix. How did the -- what the percentage of transitions from one disease to another.

We have seen it historically in Garlock and we would expect to continue to occur. We applied that to Garlock's data, and the conclusions are summarized in the next chart.

Q. 71.

A. I've already described this process. The first point is that we -- basically, this would have added claims. Because mesothelioma claims are updated as they move forward, we need to add and subtract. But you need to use the balance method, because some will be added and some will be subtracted. In the end, when we use the balance, we expect that there will be really 5,613 mesotheliomas in this database. It will add more. It will add over 800 more mesotheliomas than are currently in there. We didn't use this. Again, this is conservative. We tend to make conservative adjustments that minimize the liability.

So what we -- basically, what we do is we take the existing distribution of claims in 2010 and say okay, we expect in the future that some of those will become other diseases, but some of the other diseases will become mesothelioma. We ascribe that table I just showed you to calculate and estimate how many there will be. And this would add -- it's 859 additional mesothelioma claims which, if we added it, is another $38 million. We've

basically not included that in our forecast.

Now Dr. Bates said testimony -- I am only going to do half of this. I'm going to take out mesotheliomas but I'm not going to put them back. He should have -- if he was going to do the one based on the PIQs, he should have done the other. But Dr. Bates and Garlock chose the method for collecting the data in the PIQ process. It was their process. And they could have but did not sample diseases other than mesothelioma. That's the only way -- if they had done that, then they could have done a balanced approach based on the actual history.

But having designed a study that does not let them do this calculation, they shouldn't do a one-sided and biased calculation, just taking out claims without adding them back. If you want to do it, the only way you can address both of those issues is in the way we've done. You can do that, you increase the liability. We chose not to use that adjustment in this case because I didn't want to have to go through this explanation with the Court. But I've had to anyway.

Q. Page 69 again. So that was the response to number one?

A. Yes. The response to number one is that yes, there are things we could have done. And if we would have done it, we would have added $38 million to the

forecast. Actually, more than that because those claims would have been -- a lot of them would have been -- increased our propensity to sue calculation. So the $38 million is just the value of the pending claims. It would have been an even greater number and a more complicated explanation, but we didn't do it. If Dr. Bates wants us to change it, we can give him a higher number.

Q. Can we turn now to number five?

A. Number five is a criticism of our --

Q. 72.

A. -- propensity to sue trend. You'll recall I had forecast that the number -- that there would be a slight increase of propensities to sue over the next five years. This shows the propensities to sue. There clearly was an upward trend over the decade of the 2000s. There was an upward trend in the 2006 to '10 period that we used for our forecast. There is -- there's a bit of a cycle here, but there is an upward trend. And we chose to use --

Q. 73.

A. -- just the last five years. We looked at Dr. Bates' criticism by saying okay, you want us to calculate the actual trend rather than what we had used. And so we plotted using a regression. What was the trend line that captured the change in the number of the

propensities to sue over the period from 2000 to 2010? That's the green line that you see at the left. Then we did one for 2001 to 2010, which is the purple line. And then 2002 to 2010. So we did it for each of these periods of years starting in 2000 up to 2006.

So there's seven different lines. And that's all that pretty set of colors that look like the old game Pick up sticks. The black line at the right is our forecast. That's the increase that we've forecast. If we had done an actual calculation across the actual data across the whole periods of time here, these other colored lines reflect what would have happened, and I've summarized that result on a chart also.

This compares -- this shows how a forecast would have changed -- how a future forecast would have changed if you use the different lines that Dr. Bates suggested. There are seven. And you will see that most of them would have increased our forecast. If you ran -- if you extended out the line from 2000 to 2010 you would have had an increase of 8.7 percent of our future forecast. Five of these go down -- excuse me. Five of them go up; two of them go down. So there's a mixed picture here.

But in general, it says that our rate of increase is less than if you had done the other kinds of things that Dr. Bates was talking about. So again, this is a

conservative step that we've done it's certainly within the range of what we would have done if we used this longer period. And so we're very comfortable with what we did, and we think that the criticism is inappropriate.

Q. 69.

A. Here Dr. Bates --

Q. 69. The next item is six?

A. Yes.

Q. Account for jurisdiction of claims.

A. Yes.

Q. All right. 75.

A. This is an issue having to do with the fact that the distribution of states is a little different among pending claims than it was for resolved claims in the period in which we used for our calculation of the average, the parameters we used 2006 to '10.

And Dr. Bates said if we had adjusted for the differences in the states our forecast would have gone down. And he calculated how much it would have gone down by using two states -- he said we overcalculated in New York and California. They are higher in the pending claims than they were -- the higher the resolved claims than the pending claims, and those are high value states. So he said our historic average was different from what the future will be because there were more California and

New York claims, so the value's higher. Yeah. It's an interesting argument. We looked at it, but we didn't look at just those two states. We looked at every state.

So, for every state we looked at what the average payment was in the calibration period, how many settled claims there were in each case state, and how many pending. So we weighted each of these values for the state numbers. When we did that, our average went up not down. It went up a half of one percent. So Dr. Bates, by focusing just on two states, reached a distorted criticism that says we forecast too high.

If we had done this, this addressed the differences between the pending future claims by doing this with in state analysis, we would have increased our forecast by a half of one percent. Technically, it's a better thing to do. We didn't do it because it was trivial.

Q. 69. Lastly, number seven, account for trust information availability. 76. What was this criticism about?

A. Dr. Bates claims that the historic averages are distorted because plaintiffs' law firms consistently file claims. Some of them file claims after they've settled with Dr.- -- they've settled with Garlock. That our values are too high; they really don't represent what

should happen in a fair tort system. So we looked at whether his assertion about these differences is true. The first table here shows the average. Dr. Bates splits the claims, the resolved claims. He says okay, any claim that -- and he looked at the DCPF, the Delaware Claims Facility data, for this. There are 10 trusts. He said if a plaintiff settled with any of the DCPF trusts before -- let me start again.

If a plaintiff filed a claim with any DCPF trust before it settled with Garlock, he calls that a "before" case. And the average value of cases where there was one to nine -- one to 10 cases, trust cases, filed before it settled bankruptcy are all in the red file, and they have an average value as he showed us here. The other side is people who filed whatever claims they filed against DCPF members were filed only after they settled with Garlock. And the average value for those claims is the blue line. That's his assertion.

So we looked at it, and we saw that he had a problem because he ignored law firms. Settlement amounts is widely recognized and vary greatly by law firms. Law firms have different practices as to when they file trust claims, and he should have looked at that. And if he did, he would have gotten results counter to what he says. And so that's what we've done. The next one is an

example of his problem.
Q. 77. What does that show?
A. 77 compares -- these are two actual law firms in the data. Firm number one -- and we've split the claims as Dr. Bates split them. If they filed any claim against a DCPF trust before they settled their claim with Garlock, they're in the red bar for each firm. If the claim was settled with Garlock before they filed any of the trust claims, they're in the blue bar. You can see that for both of these law firms there is really no difference between the values of these claims. In fact, claims that were -- had filings with trusts before the Garlock settlement actually had more money on average. So that's contrary to Dr. Bates' assertion.
Q. 78.
A. But when you combine them, you get Dr. Bates' effect. So this is -- you get the result because there's a different frequency of the number of claims for these two firms. The firm number one, most of their settlements were -- involve DCPF filings. Most of their --
Q. Before you go on.
A. Yes.
Q. I have page 79, Your Honor, and it has some law firm specific information on it so I'm not going to put

it up on the chart.

THE COURT: All right.

MR. INSELBUCH: I'm going to hand one copy to Mr. Cassada and hand one up to the Court.

THE COURT: Okay.

BY MR. INSELBUCH:

Q. Without mentioning by name any of the law firms on page 79, tell the Court what the data that you observed showed.

A. Well we looked at the top 12 law firms with claims against Garlock, ordering them by how many claims they filed with DCPF, the people for whom we have data, the most frequently filing firms. As I mentioned, there are up to 10 trusts that DCPF handles. Some claimants -- some claimants have filed all 10 claims against all 10. Some of them have filed against five, and so forth. There's a varying number.

But what we did is we looked at for each claimant in a law firm what fraction of the claims for that law firm were filed before having settled with Garlock or after. It could be anywhere from every claim filed against Garlock was filed after. Every claim filed with a DCPF trust was filed after settling with Garlock, and that's the column a hundred percent. Every claim with the DCPF was filed before settling with Garlock, or 90

percent of them could have been filed after, or 80 percent or so forth.

Dr. Bates' variable basically takes everything to the left of the hundred percent and says those were filed before. Whether it had -- whether there was only 10 percent of the claims that the trusts were filed before they settled with Garlock or all of them were, which was is the 90 percent column, or all the claims were filed, that's the first column, the zero percent. So he ignores the variability here. That in and of itself is telling.

If Dr. Bates is asserting that plaintiffs' lawyers have a concerted effort to file their claims with trusts based upon when they've settled with Garlock, you wouldn't get a distribution like this. The fact that this is so widespread and variable and that they settle across all this tells me this is a random coincidence with regard to whether or not they've filed with a trust before they settled with Garlock. And remember, these people are suing lots of defendants and so they would have to pace the timing of their filing defendant by defendant. It's really a silly proposition.

But if there there's some concerted effort here, these data belie that. We've been able to look at that data on a law firm by law firm basis. And also, his variable of its splitting between 90 percent and 100

percent is a poor measure. It really doesn't measure what's the behavior, the variable behavior, of plaintiffs. So we looked at that as demonstrated on the next slide.

Q. 80. What does this slide show?

A. This is for each of those 12 law firms separately. It will bottom -- the dots going across the bottom represent what percentage of their claims were filed with DCPF members after having settled with Garlock. The height of the dot is the value of the settlement. So that if you look at firm one, the value of a settlement was really unrelated at all to when -- how many -- what percentage of the DCPF -- the value of the Garlock settlement was unrelated to what fraction of the DCPF claims were filed before or after they're settling with Garlock. That's the flat line. One year was a little different. The people -- one percentage, 90 percent, is a little bit higher, but it's -- that's not significant. That's essentially a flat line. All of these are basically flat lines.

Firm two, there's a slight decline. And the line is -- we fitted -- statistically fitted the line to be -- to do a regression again, yet again, to -- in order to kind of get the midpoints of all these to best represent what the trend is. These differ from law firm to law

firm. There's no pattern here at all. But law firms by law firms differ greatly, and there is no distinct pattern showing that -- one way or the other showing that law firms expedite their trust filings in relationship to the settlement with Garlock or delay them.

It's just -- the premise is wrong; it's not represented here. And the only reason he gets his result at all is because this differs from law firm to law firm. And the way he combines them led him to kind of impute this evil mold with the law firms. There's just nothing here.

Q. All right. Garlock claims that based on its analysis of 15 cases, the database of over 16,000 paid resolutions that you work with is somehow untrustworthy. Can you comment on that?

A. Yes. I mean I think that's just a silly proposition. You can't -- he's basically demeaning 16,000 claimants and their lawyers. I don't know enough about these 15 cases to comment on the appropriateness of their characterization. I've not been -- I've looked at the reviews of them. I've not studied them. I'm not going to comment on them. But assuming that they're right and that there was some impropriety in these 15 cases, that's less than one-tenth of one percent of the claims. You don't say that all of the claims are suspect

because you've found 15 bad apples. I have a good friend whose comment was once was, there's 12 of anything in New York City. And there's 15 of anything anywhere. I mean, this just doesn't tell you anything about a general pattern of these claims. You can't impugn them based upon this. It's an ad hominem argument.

And in any event, even if you think that every claim filed by the law firms that submitted these 15 claims was somehow questionable or problematic, they only represent less than five percent of the claims. I've heard no representation that there is a general practice among these law firms, or a demonstration, that would suggest that this is an issue beyond the 15 cases. But even if it does cover every one of them, again, it's a small issue and it doesn't cast doubt upon either the integrity of the claiming process or the quality of the database upon which we rely.

Q. 82.

A. 82 just shows the percentages of -- there are five law firms that had these 15 claims. Together they represent 4.1 percent of all the claims with Garlock. If you look at simply the top, what is it? It's about another -- there are 12 or 14. I haven't counted up the total number of law firms that have more claims than -- each of those law firms has more claims with Garlock than

the largest of the 15 claims -- law firms representing each of the 15 claims, each of them does, and together they represent 40 percent of the claims. At worst, this is not a general problem and you can't make it into a general problem.

Q. I pass the witness.

THE COURT: All right. Mr. Cassada.

MR. CASSADA: Your Honor, to begin with, we've seen a lot of graphs and things with blind information on it. We'd request that we would be given that information this evening so we can determine who the law firms are and what -- who are blindly referenced in the exhibit.

MR. INSELBUCH: Which exhibit?

MR. CASSADA: Well --

THE COURT: I think it's just --

MR. INSELBUCH: You have that one.

THE COURT: It's just that graph, probably.

MR. INSELBUCH: There they are.

MR. CASSADA: So they're in the order they appear here?

MR. INSELBUCH: Yeah.

MR. INSELBUCH: We wouldn't kid you.

CROSS-EXAMINATION

BY MR. CASSADA:

Q. Good afternoon, Dr. Peterson.

A. Hello, again.
Q. Hello. I want to start by asking you some questions about your methodology. You call it the standard methodology.
A. Yes.

Q. You also call it the Nicholson standard methodology because it's based on what you described as the Nicholson incidence model?
A. Yes. I call it both things.
Q. Your methodology does not permit you to estimate the number of people whose mesothelioma was caused or contributed to by a Garlock product, does it?
A. It lets me estimate the number of claims historically that were found compensable by Garlock.
Q. I'm asking a different question.
A. Causation is not necessarily considered in all group settlements. So, no, I don't think I addressed that, just like Garlock didn't generally address that.
Q. So the answer to my question is that is correct? Your methodology does not allow you to estimate the number of persons whose mesothelioma was caused or contributed to by any Garlock product?
A. No. I can't think of any method that would let me do that.
Q. Okay. You've not studied or made any attempt to determine the total damages that current or future mesothelioma claimants might expect to recover from all sources, have you?
A. I haven't, because that's an impossible number to calculate.

Q. Okay. You also stated in your deposition you have no opinion of Garlock's share of a mesothelioma claimant's damages; correct?
A. I have no general impression because that's going to vary case by case. That's a case specific issue.
Q. Is there any specific pending case or future case where you have an opinion on that issue?
A. No.
Q. Okay.
A. I don't have a general one or a specific one. No.
Q. And you also haven't formed an opinion as to the total number of responsible parties in a typical mesothelioma case, have you?
A. I don't understand your question.
Q. What part of my question do you not understand?
A. What's a typical -- whose share? What's -- I don't understand what you're asking me.
Q. You deal in average claims, and we've seen the average claims under your model?
A. I can address that.
Q. You haven't formed an opinion as to the total number of responsible parties in an average mesothelioma case; correct?
A. Every case ever filed against anyone, or Garlock cases?

Q. Garlock cases.
A. Yes, I have an opinion about that.
Q. What is that opinion?
A. It's two shares.
Q. So you're saying in the average Garlock case there are only two parties responsible?
A. That's its history. Yes, absolutely. We've compared for the cases for which we have data on both the verdict against any -- total verdict in the case and the amount eventually paid by Garlock. We've compared those two. And generally, Garlock pays half of the verdict which implies a two-defendant share.
Q. More on that later.
So have you attempted, then, to determine the total number of responsible parties in a case where Garlock might be found liable?
A. Beyond my last answer, I don't think I can calculate that.
Q. You don't have an opinion on the aggregate amount of money that a typical mesothelioma claimant will recover on a trust; correct?
A. What do you mean "a typical?"
Q. An average.
A. You could perhaps calculate that, but it would be incomplete. No, I haven't done that.

Q. You haven't done that?
A. No. I don't -- I don't think you can actually do it.
Q. Okay.
A. Well, no, you can't do it. I'll answer that definitively. You can't do that.
Q. Do you recall when I asked you at your deposition in Los Angeles last month, "Have you undertaken to estimate the number of other responsible parties in cases where Garlock might be found liable?" You said no. Do you recall that?
A. No. I'd like to see what precedes this.
Q. Sure. Your deposition was taken in Los Angeles on June 20, 2013. And I asked you a question.

Question: "Have you undertaken to estimate the number of other responsible parties in cases where Garlock might be found liable?"

Answer: "No."

Question: "You have not?"

Answer: "No."

Question: "Are you planning on studying that?"

Answer: "I don't think it's something that one can identify. It involves some of the same judgments about trying to deal with the question of causation -- I'll leave it at that. There are

other problems with that approach."

So you have not done that. You hadn't done that as of June 20 and you have not done it as of today, have you?

A. Can I see the questions that you asked me again? It's been pulled off the screen.

Q. I'm sorry?

A. Can I see the top? Move this down.

Q. Sure.

A. All I've been able to do is to see in cases were paid. Oh. That's a different question. Have I undertaken -- have you undertaken to estimate the number of other responsible parties in cases where Garlock might be found liable? So you're not asking about history. You're asking me about cases where there may be liability found in the future, what will be the responsible parties. No. That number is not calculable, and I didn't do it then or now.

Q. You don't have an opinion for either pending claims or future claims?

A. I don't know what's going to -- what cases are going to be found liable. And the only cases that are found liable, as I testified earlier, are cases that go to final judgment. No. None of them will go to final judgment, frankly.

Q. Do you have some understanding of tort law?
A. Yes.
Q. Have you drawn on that understanding in connection with your opinions in this case?
A. I don't think overtly or specifically but, I mean, I studied it. I've been involved in it. I've studied it both in law school and I've studied it in my research, so, I know some things about it.
Q. You understand --
A. I'm not here as an expert on the law.
Q. You understand, don't you, that a claimant who does not expose -- assert exposure to Garlock's product is not entitled to a jury trial? Do you understand that?
A. I don't think that's a correct statement.
Q. Okay. Then in rendering your opinions, you have proceeded on the assumption that a claimant who cannot assert exposure to a Garlock product would be entitled to to proceed to trial?
A. I'm aware of no cases that have done that. But if a claimant can -- and there's a -- I understand there may be a factual basis for doing so. If a claimant can assert a conspiracy claim against Garlock, then -- and that gets past summary judgment, then he can go to trial. I'm not aware that anyone's done that, but that's why I answered the way I answered.

Q. Okay. Let me rephrase my question then. Do you agree that a claimant who does not assert exposure to a product for which Garlock can be held liable is not entitled to a jury trial?
A. My understanding is that there are some cases where people have -- the evidence has come up in the course of the trial that's affected that. I would think that's rare. You're asking me an opinion, an entitlement about what are the laws and practices with regard to Summary Judgment in 50 jurisdictions. I'm uncomfortable in answering that question. My expectation is, given the availability of the Summary Judgment, that there would be diminishingly few that would ever go to trial under the circumstances, I'd agree. But just the preciseness of your question bothers me a bit and that's my problem.
Q. Okay. So what you attempt to estimate is what Garlock would have paid to settle mesothelioma claims had it remained in the tort system; correct? Is that a correct statement of the object of your estimation?
A. It's what Garlock would have paid and the claimant would have received from Garlock for pending and future claims in the tort system. Yes.
Q. Okay. And I believe the way you described this during your deposition is that your task was to estimate a "stream of contract claims that would have been created

but for the bankruptcy." Is that an accurate description?

A. That wouldn't have been my first statement. So if you want to show -- if you think that's an important matter, you should show me where I said it. What I do is what I just described. My expectation is most -- most but not all of them will eventually have a settlement, yes. And a settlement's a contract.

Q. And you do not equate settlements with legal liability, do you?

A. Of course they are.

Q. And so you are settling -- you are estimating liability in the sense of a contract liability?

A. I'm saying -- you asked about liability. I've stated again and again that liability's only determined with a final judgment. There's two ways to get it in an asbestos case, final judgment or convert the disputed unliquidated asbestos claim into a definitive, specific liquidated contract claim which is contract liability. Those are the two sources.

Q. So you are estimating a liability that arises when Garlock would be expected to enter into a contract.

A. For most cases, it becomes a specific liability under those circumstances. Obviously, Garlock doesn't pay money -- I mean there's considerations for why this

settlement is reached and that is that Garlock has some risk of liability or some other reason for settling these cases. If not the risk of liability for that case, for a group of cases that get money.

I mean, this -- I stated earlier in my direct that you have to think about the interrelationships in one case to another. These are mostly group processes. The cases are not evaluated one by one. Typically, they're evaluated, what's the risk of this group? Can Garlock buy out a bunch of cases cheap and avoid the risks constituted by any members of that group? That's the calculus that gets done.

Q. But you recognize, don't you, that settlements can be motivated by factors other than perceived risk of liability.

A. Other things can affect it. I wouldn't -- I don't think I would agree with your statement. No.

Q. Would you agree that settlements can be motivated by a desire to avoid the cost of litigation?

A. I don't think that that's the sole basis for a settlement. No.

Q. Do you recall --

A. That's a foolish proposition.

Q. Do you recall testifying in this courthouse back in 2010 that 99.9 percent of Garlock's settlements were

reached in order to avoid the cost of litigation?
A. I don't recall that.
Q. You don't recall that statement?
A. No.
Q. Okay. You testified here in Charlotte, I believe it was on October 27, 2010. Do you recall being here?
A. I see the date.
Q. Okay. So you were asked then, "So the desire to avoid the cost of defense is an important factor that might motivate a defendant to settle?"
And you said, "That's why 99.9 percent of the cases settle, rather than going to trial, because both sides know that these are expensive propositions."
Do you recall that?
A. Can I read what preceded the question, please?
Q. Sure.
A. Actually, what you've got up is fine. Can you move it up? All right. Now can I read the question and answer again, please?
Q. The question is whether you agree that settlements are entered in part by desire to avoid defense costs or, excuse me, cost of litigation.
A. That's not the question you asked me. And this is -- this is the question -- what you showed me was the response after I'd answered the first question, I

believe. And you should put the prior page up or go to the top of this page.

Q. Do you acknowledge, Dr. Peterson, that settlements are motivated in part to avoid the cost of litigation?

A. I think both parties are aware of and want to avoid the cost of litigation. So it enters into the consideration of both parties. Yes. I don't think it is the -- it is sufficient for settlement.

Q. But you testified in this case that Garlock's settlements were motivated 99.9 percent by the desire to avoid costs.

A. I asked to see the question and answer again. Please let me see the question and answer again. You asked if it was an important factor that might motivate a defendant to settle.

Q. I did. And your answer was, "That's why 99.9 percent of the cases settle rather than going to trial."

A. Let me see the rest of this.

Q. Because both sides know these are expensive propositions?

A. Yes. It's an issue for both sides, and so it can affect the decisions about settlement. Of course I agree with that.

Q. So, in your view, you can have settlements also based on a party's perception of trial risk?

A. Trial risk is an issue. I don't think I'd say that answer the same way. Trial -- the issue of the risk for going to trial is pretty abstract. But, yes, if you have the prospect of losing as a plaintiff and getting more money, as I described earlier in my direct testimony, that would be a concern. And if Garlock thought it was going to lose at trial, it would be a concern and a motivation for settlement.

I think in most cases that get settled in group settlements, it isn't much of a consideration because they haven't gotten that far yet; they can't assess the risk. But there is a knowledge that there is a risk, and that's a part of the settlement process. Yes, I would think that's a better answer than what I said here.

Q. You think that's a better answer than what you said when?

A. On what you were showing me.

Q. So you remember before that you said the risk of trial was not much of a settlement factor at all?

A. Yeah. I don't -- much -- it's a quantification. It is an issue.

Q. Okay. So you've changed your mind from --

A. I don't know if I changed it. I'll give you my current opinion.

Q. Okay. Do you agree that a trial outcome for a

particular defendant is affected by the number of potentially responsible defendants?

A. Can be.

Q. I'm sorry?

A. Can be.

Q. Would you expect that it normally would be?

A. It depends upon the case.

Q. Okay. Would you agree that settlements are affected by the number of defendants that a plaintiff alleges have liability? Settlement amounts of a particular defendant.

A. Would you repeat that question?

Q. Would you agree that the settlement amount of a particular defendant would be affected by the number of defendants that a plaintiff alleges had liability?

A. Could be.

Q. Would you expect that it normally would be?

A. It would be, I would think, generally a secondary issue if it has an effect.

Q. I thought I understood you to testify earlier on direct that the bankruptcies of co-defendants have had a profound effect on defendants in the tort system who were prior thereto peripheral defendants. Did I understand that correctly?

A. Yeah. I think -- well, when -- where are you

quoting my testimony in this case?
Q. Earlier today you talked about the history of asbestos litigation and how bankruptcies of big defendants affected surviving defendants. And I believe you said it made small peripheral defendants big defendants.
A. I think I said that it had the potential to make some of them big defendants.
Q. And the principle at work there would be what you described as plaintiffs' lawyers being able to successfully pass on the share of the bankrupt defendants to the surviving defendants?
A. I think the mechanism -- I specifically mentioned Owens Corning and W.R. Grace, I think. Not Owens Corning. Turner and Newall. Turner and Newall in particularly, as we heard, did get big judgments. The risk for them is primarily the documents that were out there about them. So that's the real risk they have and why their amount would go up.
Q. I want you to answer my question.
A. I'm sorry. Would you let me finish, please?
Q. I don't think you're answering my question.
THE COURT: Let him finish.
BY MR. CASSADA:
Q. Okay. He's talking about --

A. The fact that -- of the value of a claim goes up against a defendant when all the people go into a bankruptcy can be attributed to a number of things. But certainly there's less attention. There's not any attention on the people that are no longer there, and that's going to affect who's left. I didn't say there wasn't an effect. There wasn't an effect historically demonstrable for the peripheral defendants and that's clear.

There were -- so many things changed in 2006. You can't attribute any particular change in the settlement values which went up to a particular issue. Bankruptcies were one of a number of things that happened. And I said today that I think bankruptcies are one of the reasons they went up.

Q. But is it true that when a company files for bankruptcy, the liability share of that company is picked up by surviving companies?

A. It depends on the state, the jurisdiction.

Q. Well, so it's true in some states and some jurisdictions?

A. Yes. That's my understanding that's true, but I'm not an expert on the allocation of liabilities across states. That's a very arcane issue.

Q. Did I also understand you to say that when that

defendant that files for bankruptcy establishes a trust that's paying that defendant's share, that the money paid by that trust has no effect on the surviving defendants who previously picked up that defendant's share?

A. I don't think I said that. No.

Q. So just to be clear then. Under those circumstances, payments of a trust would impact payments that a surviving defendants would have in states that follow the rules you described?

A. You could have multiple impacts.

Q. All right.

A. Some good for the surviving defendants, some bad for them.

Q. Did you see this slide here in Dr. Bates' presentation?

A. Let me look at it.

Q. Okay. Take your time.

A. I don't recall this particular slide.

Q. Do you understand it?

A. I'm not sure I do.

Q. Remember we talked in your deposition about the literature of law and economics?

A. Yes.

Q. And what that literature said about the relationship about settlements and liability?

A. You can show me specific language. I don't know what you're referring to.
Q. Do you agree that a defendant's maximum settlement offer in a case would be equal to the defendant's expected liability, plus the amount of defendant's avoidable cost? Avoidable cost being the amount it would take the defendant to try the case.
A. I think that it is more complex than that.
Q. So do you agree with that as a general proposition?
A. Do I think that -- certainly, it's a -- repeat your question, please.
Q. Do you agree that the amount -- that the maximum amount a defendant would be willing to pay in a given lawsuit would be the amount of the defendant's expected liability plus the defendant's avoidable defense costs, those being the costs that it would take the defendant to try the case?
A. Generally, probably I don't think that's -- I don't think that's an absolute rule.
Q. What do you understand the formula to be for a plaintiff? What's the minimum amount a plaintiff would --
A. I don't see that what you've got here -- I don't understand the question you asked me is necessarily

represented on this graphic.
Q. How is it not represented on this graphic?
A. Well it starts out with "allowed claims amount under bankruptcy code." I don't understand the significance of that to what's below it.
Q. Okay. I'm not asking you about the allowed claims under the code. I'm asking you about the equation.
A. Oh. Well you didn't say that. Now, that -- okay. I'm sorry. That threw me. I didn't understand its relevance and I still don't to the rest of this.
Q. Okay.
A. The top part is the defense side of an equation.
Q. Correct.
A. It's probably more complicated than that, but that's kind of the bare bones statement.
Q. Okay. What is that equation missing?
A. Well, I mean, there's such things as -- there are external costs of going to trial, but we want to take into account --
Q. Okay.
A. -- bad publicity and things like that. There are other factors that probably would enter into something like this, but it's a simplistic approach to it. I've actually presented something like that in my legal decision making, my 1982 publication at RAND.

Q. And the plaintiff's equation. Do you agree with that? The plaintiff would be willing to pay the plaintiff's expectation about the outcome of the trial minus the plaintiff's avoidable cost. That's the lowest settlement offer a plaintiff would be willing to accept.
A. I'm not sure that I agree with the contingency rate issue in there.
Q. Okay. What's your disagreement with the contingency rate issue?
A. Well, I think that the decision is made at an aggregate level for -- the claimant is not a sophisticated participant in -- the plaintiff's not a sophisticated participant in asbestos litigation. He's following the advice of his lawyer. The lawyer thinks about the group as a whole, he and his client, and that's how I view this. And so I don't think I agree with this disaggregation.
Q. So when you say that the --
A. The decision maker's primarily the plaintiff's lawyer who has to then get the approval of the client.
Q. But when you say the group. "The group" is defined as the plaintiff and his lawyer?
A. Yes.
Q. A group of two?
A. That's a group.

Q. Okay. And you're saying that the plaintiff's lawyer actually makes a recommendation on the settlement?
A. They usually do.
Q. Okay. And the plaintiff's lawyer then takes into account the plaintiff's lawyer's personal interest?
A. I don't understand that question.
Q. Well, I'm trying to understand why you don't believe that the -- there should be an adjustment in the equation for the contingency rate. And you said it was because the plaintiff's lawyer made the recommendation to the plaintiff.
A. It's a unity. The plaintiff and the plaintiff's lawyers are a unity.
Q. And what considerations, steps, does the plaintiff's lawyer take into account that the plaintiff wouldn't?
A. He can't make the decision. It's the client that's got to make the decision. I mean, that may be pro forma, but that's generally the way it's done. And typically, the plaintiff's lawyer is looking out -- not always, but typically he's looking out for the interests of the client.
Q. Okay. Are you suggesting that the plaintiff's lawyer is taking into account the plaintiff's lawyer's costs in the litigation?

A. Would you repeat that question?
Q. I'm trying to understand why you think it's significant that the plaintiff's lawyer is making a recommendation to the client. Wouldn't the plaintiff's lawyer be making a recommendation based on the client's best interest?
A. Well, first of all, I think that this calculation probably isn't applicable in most asbestos cases. It's not -- it's a formula that is developed for one on one litigation. Asbestos claims are not one on one litigation. It's a mass tort. Claims tend to be settled in groups, not individually. The plaintiff's lawyer settles a group of claims or probably tells the plaintiff when he comes in, this is what I think I can get you based upon the standing -- some of these cases are settled before they ever get filed.
Q. Okay.
A. So this is an artificial process that's been generated to deal with one on one litigation in a non-mass tort setting, and I don't think it's applicable here. So I mean, I just have a very hard time trying to translate that into what I believe is the realities of a litigation after having studied it for 30-some years.
Q. Do you concede that some settlements are negotiated individually?

A. Sure.
Q. Okay. Would this formula apply in those settlements?
A. Well, I don't -- I think there is a community of interest between the plaintiffs and the plaintiff's lawyer. So the issue of the contingency fee doesn't enter in at this stage.
Q. So when we talk about the community of interest, we're back to "the community" being the plaintiff and the lawyer?
A. Yeah.
Q. Okay. So what interest does the -- is taken into account that wouldn't be an interest of the plaintiff?
A. I don't understand that question.
Q. Well, what will -- what interest is taken into account under the community interest that wouldn't be an interest if you were just considering the plaintiff alone?
A. Well, I just -- you don't -- you take the contingency rate issue out of it. You look at the total -- total recovery of the two of them.
Q. So what you're saying --
A. I think that's the way -- if you're doing it that way, then you just disaggregate it afterwards. But I think that's how -- I mean, I have not -- this is the

kind of thing that applies in cases that are maybe going to trial and you're given an offer at some point in time. I don't think this kind of -- I think it's artificial. It's kind of the Chicago economics view of the world, and they have an unusual view of the world. They don't know the nitty-gritty and the kind of -- they don't know how the sausage is made.

Q. And in this case, the "sausage" being made is that the plaintiff's lawyer, when he's -- when an individual plaintiff settles a case, that the interest of other plaintiffs in a group are taken into account?

A. Are you talking about an individual settlement or a group settlement?

Q. I'm trying to understand what the "sausage" is that you say confuses the equation.

A. I'll withdraw the sausage reference; it's complicating the discussion unnecessarily. On an individual case that's going to trial. This kind of calculus is probably relevant. For most cases in asbestos that's not the case. There's a group deal. You can probably -- a lawyer -- a claimant comes in and a plaintiff's lawyer identifies you -- I can see now you've got these six good claims now, and I can tell you this case is going to, because of the established relationships we have with Garlock, we can get you this

amount of money. And for this case we can get you this amount of money. I've already got a deal for these things. So we can get that kind of money if -- assuming the facts are true about being able to show the exposure.

So that's the total recovery I can see from this group. And a third of it, or 40 percent of it, or whatever it is, is for fees. You get the balance of it. And I don't think we're going to have much expenses. But if there are expenses, you'll have to pay for them.

Q. So in --

A. That's the kind of consideration that goes on. And now there are these three other cases that are really good people to try cases. They've got a lot of money. They're likely to be willing to roll the dice. I can get you this money today, or I can get you -- the Garlock money I can get you the next week. But if you want to, we can press on with these others, but I recommend you take the Garlock money now, and these other things I can get you now. And, you know, these other cases are much more -- may have higher value, but you're not likely to see money for years. And if you're suing Garlock, even if you win, you probably won't see money for three or four years because they'll appeal.

That's the kind of discussion -- it's probably in greater depth than really occurs, but that's how the

litigation is conducted.
Q. So it's conducted without specific discussion about the merits of a particular case against a particular defendant?
A. No, no, no. I'm assuming that the reason he says you've got a claim here against Garlock is because I can see here you have a Garlock exposure. If you don't have a Garlock exposure, he's not going to say that. Of course not. You don't want to get your hopes with a client that you can make up things and then don't make up things.
Q. So some claimants don't have Garlock exposure?
A. Of course not.
Q. Okay.
A. There are a lot of people that have asbestos claims that don't sue Garlock.
THE COURT: Let's take a break for the day. We'll come back and start this in the morning at 9 o'clock.
MR. GUY: Your Honor, for tomorrow I believe Dr. Heckman is here, which is Coltec's witness. And I'm not sure how long Mr. Cassada has with Dr. Peterson, but our plan remains to put Dr. Rabinovitz on, get her off, and finish with Dr. Heckman so we're done on Friday. And then we can maybe revisit how much time the debtors need, because that would give them a full day Monday.

THE COURT: All right. Okay.

MR. GUY: Thank you.

THE COURT: We'll start at 9 o'clock in the morning. Thank you.

(Off the record at 5:32 p.m.)

CERTIFICATE

I, Tracy Rae Dunlap, RMR, CRR, an Official Court Reporter for the United States District Court for the Western District of North Carolina, do hereby certify that I transcribed, by machine shorthand, the proceedings had in the case of IN RE: GARLOCK SEALING TECHNOLOGIES, LLC, et al, Bankruptcy Case No. 10-BK-31607, on August 8, 2013.

In witness whereof, I have hereto subscribed my name, this 9th day of August 2013.

__/S/__Tracy Rae Dunlap___
TRACY RAE DUNLAP, RMR, CRR
OFFICIAL COURT REPORTER